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**LAW AND TRANSITIONAL
SOCIETY: CHINESE AND
GLOBAL PERSPECTIVE**

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NAVEIÑ REET:

Nordic Journal of Law and Social Research

Law and Transitional Society: Chinese and Global Perspective
Number 7 – 2016-2017

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Foreword

Law, as a proudly social practice, has been undergone tremendous transformation in a transitional society. Both empirical evidences and theoretical research reveal that law plays a more or less significant role in a changing world with the rapid development of science and technology, growing market economy, decaying traditional values, increasing environmental contamination, even with our epistemological grasp of the topsy-turvy world. Societies change ruthlessly and almost every legal system is struggling to be responsive. This trend is true in a globalizing world and of particular relevance in a Chinese context.

Obviously, the Chinese society has been changing since its reforming and opening up in late 1970s. As an emerging global power, the Chinese legal system is inscribed in political, economic, cultural, social and legal practices, resulting at times in new, hybrid forms of laws and legal institutions, but also often triggering continuing struggles and conflicts.

In this volume selected papers from the conferences held in Copenhagen 2014 and Wuhan 2015 are published. This volume explores how the Chinese legal system responds the social transition and shaped by it and what roles would China play in the global legal environment.

Our thanks to the Centre for Studies in Legal Culture, Department of Cross-Cultural and Regional Studies and Law School, University of Wuhan for their cooperation.

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Last but not the least we are thankful to the Van Fonden for financing the publication of this volume.

Bent Ole Gram Mortensen

Rubya Mehdi

A Chinese Perspective on the Approach of Mining in Greenland

By Jingjing Su

China and Greenland, positive prospect for cooperation

China can become one of the important partners for Greenland in terms of developing nature resources. One reason is that China needs large amounts of resources and energies to sustain its economic growth. China has become the second largest economy in the world around 2012 and still keep high growth rate until now¹. In 2015, China became the largest energy producer in the world and now produces 19 % of world energy. At the same time China is also the largest energy consumer in the world consuming 23.37% of the world energy.² Another reason is that China is often seen as one of the few states that have the capability to execute the necessary investment.³ In 2014, China overseas investment reaches 102.8 billion USD, China has completed overseas projects of 142.4 billion USD, China has sent 562 thousand labours to work overseas, covering 156 countries, and more than 20% are within the mineral sector.⁴ Therefore, the big mining potential in Greenland might attract Chinese investment. In 2012, by Greenland's invitation, the Chinese Minister of Land and Resources and the Director of State Oceanic Administration visited Greenland, and in 2013, China joined in the Arctic Council as a permanent observer state and since then China started to engage with the Arctic countries and to co-host China-Nordic Arctic Cooperation Symposium annually, which shows China's genuine interest in Arctic.

From Greenland's side, Greenland Ministry of Mineral Resources has brought many Greenlandic companies to meet with Chinese investors. Since 2011, Greenland government sent the delegation, head by the Minister of Mineral Resources to participate in China Mining Conference every year. In 2014, Greenland government sent the

1 "World Development Indicators, China", data in 2013, World Bank Data, <http://data.world-bank.org/country/china>

2 "BP Statistical Review of World Energy", June 2014, 63rd edition, <http://www.bp.com/content/dam/bp/pdf/Energy-economics/statistical-review-2014/BP-statistical-review-of-world-energy-2014-full-report.pdf>

3 "In likely Arctic race, China cautious in tapping resources", last updated on April 22, 2014, <https://thinkchinablog.wordpress.com/tag/greenland/>

4 "China 2014 overseas investment, projects and labour overview", updated on January, 2015, Ministry of Commerce of the People's Republic of China <http://fec.mofcom.gov.cn/channel/tjzl.shtml>

delegation to participate in the “Mines and Money Hong Kong”, which is considered as one of the major platforms to attract mining investment. In November 2014, the first and only large-scale mining project ISUA project in Nuuk area was sold to a Chinese company General Nice.⁵ And on September, 2016, a Chinese rare earth company Shenghe Resources, which lists in Shanghai Stock Exchange, purchased 12.51% of GME’s Kvanefjeld project and had an option to purchase no more than 60% of the project stake in the future⁶.

However, there are many concerns in the media about Chinese mining approach in Greenland and in reality lack of any successful mining project made by Chinese makes it difficult to demonstrate a real business case. Some are worried that the cultural differences between Chinese mining workers in Greenland and the local people will create mass social problems, for example, in the public report, some estimated that the ISUA project might need 5,000 Chinese workers while the population of Nuuk, which is the capital of Greenland, only has 17,000 residents⁷; some are worried about environmental issues; some are aware of Chinese investors’ negative Corporate Social Responsibility (CSR) records in Africa and are worried about the same might happen in Greenland and so on.⁸ All these concerns are crucial for Chinese companies’ approach of mining in Greenland.

Chinese international commitments and domestic legislations on CSR, and its concerns

The Chinese companies’ CSR commitments might in reality not be as bad as communicated by the media. One reason is that China has established its CSR legislation. With a view to enhancing Chinese international CSR commitments, China has entered into many international agreements and conventions. China has signed the Universal Declaration of Human Rights, and four of eight fundamental conventions of International Labour Organization: C100 Equal Remuneration Convention, 1951; C111 Discrimination

5 “Chinese group General Nice takes over Greenland mine”, updated on January 11, 2015, the Financial Time, <http://www.ft.com>

6 Shenhe’s announcement in the stock exchange, <http://www.scsbre.com/information.asp?news>

7 Carol Matlack, Chinese Workers—in Greenland? 11. February 2013 <https://www.bloomberg.com/news/articles/2013-02-10/chinese-workers-in-greenland>

8 Martin Breum and Jorgen Chemnitz, *No, Greenland Does Not Belong to China*, February 20, 2013

(Employment and Occupation) Convention, 1958; C138 Minimum Age Convention, 1973 and C182 Worst Forms of Child Labour Convention, 1999.⁹

When we turn to the Chinese domestic legislation, it appears that it covers human rights, employment and environmental matters. Human rights are written in the Chinese Constitution Law, 2004. Labour Law comes into force in 1995, Labour Union Law in 2001, and Labour Contract Law in 2007. China also enacted the Protect Woman and Child Law in 1992, Under Age Worker Protection Regulation in 1994, Unemployment Insurance Rules and Social Welfare Regulation in 1999, Working Safety Regulation in 2002, Industrial Injury Insurance Rules in 2003, Forbid to Use Children Workers Rule in 2002, Collective Agreement Regulation, Minimum Wage Regulation and Working Condition in 2004. In 2012, China State Council published Regulation on the Administration of Chinese under Overseas Labour Cooperation, which is the first and the only Chinese law governing Chinese labour working abroad. Furthermore, Environment Protection Law was enacted in 2014 as well as regulations for industrial safety and environmental protection.

Most of Chinese rules of employment and environmental matters are coordinated with OECD standards; except freedom of association (independent labour union) and force labour¹⁰, which are two of eight fundamental conventions of International Labour Organization C029 Forced Labour Convention, 1930 and C087, Freedom of Association and Protection of the Right to Organize Convention, 1948. Therefore Chinese mining companies might not be familiar in dealing with labour union in Greenland, but they are well trained in China with regards to most of the other CSR standards.

Some Chinese scholars argue that the scope of the eight fundamental conventions is too wide, and suggest there should not be any uniform labour standards at the international level because of the aspects such as history, culture, and developing process differs among various countries. Developing countries like China will lose its competitive power by raising employment and environmental standards¹¹. Some Chinese scholars are worried about high employment and environmental standards being a new trade protectionism measure, since low wage and other less favour social and environmental conditions are

9 International Conventions, Ministry of Foreign Affairs of China, updated September, 2014 http://www.fmprc.gov.cn/mfa_chn/gjhdq_603914/gjhdqzz_609676/lhg_609678/t311022.shtml

10 Fan Ying, Zhang Wei, *International Labour Standard and International Trade: from SA8000 perspective*, Internal Business, July, 2004, Page 5-8

11 Yang Huizhen, 2006, Zhou Peng, 2004

considered “social dumping”.¹² From 1995 to 2009, China had been the number one country in the world that received the most dumping charges in WTO. In 2007, China received 61 charges that took 37.2% charges in the world.¹³ Some Chinese scholars are worried about although EU and USA do not grant China as market economy status, after more Chinese companies have received the treatments of market economy status, there will be less price dumping charges, but more social dumping related charges.¹⁴ Many Chinese scholars disagree to use WTO rules to solve the social dumping and tend not to link trade with employment and environmental standards.¹⁵ Therefore, the investment mechanisms of Chinese companies in Greenland and subsequent exports of minerals out of Greenland needs to be carefully designed beforehand.

Chinese companies CSR commitments

It is advisable for Chinese companies’ approach in Greenland that they apply international CSR standards with the principle of government regulations, chain liability, and self-discipline¹⁶.

Before discussing Chinese companies’ CSR commitments, it is a fact that the lack of Chinese companies’ CSR commitments has raised serious concerns both in and outside China. In 2007, the use of “slave labour” in central China, where thousands of workers, many under-aged, were required to work as slave labourers in illegal brick kilns, coal mines and iron mines was covered widely in the news media¹⁷. At the same time, as Chinese companies expand their operations overseas, their labour and environmental practices in other parts of the world have been examined and questioned globally, especially in Africa.¹⁸ Generally speaking there are three main areas of concern for the Chinese companies’ CSR commitments abroad: the first is low employment standards. Many strikes happened in

12 Yu Shenxing, 2007; TANG Tao, 2006;

13 Liu Aidong, Liang Jie, *A statistical analysis of overseas anti-dumping cases against China from 1995 to 2009*, J. Cent. South Univ. (Social Science), Vol.16 No.4, Aug 2010.

14 Chen Jian, *International Trade and Labour Standard: WTO focus questions*, International Trade, June, 2000, page 18-22.

15 Guo Genlong, Feng Zongxian, *the Dispute of employment and environmental standards in the international trade*, Morden Economic Science, January, 2004.

16 Lu Tanga, Hongmei Li, *Corporate social responsibility communication of Chinese and global corporations in China*, Public Relations Review, May 2009

17 2007 Chinese slave scandal, last modified on 8 May 2015, from <https://www.wsws.org/en/articles/2007/06/chin-j22.html>

18 China’s Overseas Environmental Problems Cause Domestic Concern. Retrieved October 2, 2008, from <http://www.chinastakes.com/story.aspx?id=147>

Chambishi copper mines in Zambia because of low salary and poor working conditions¹⁹. The second main concern is environmental issues. A Chinese state owned oil company has been charged with mass pollution, destroying areas of a park and cutting off roads through the forest in Gabon.²⁰ The third main concern is work safety matters. A case also happened in Chambishi copper mine in 2005, where 51 people died in an accident.²¹

In order to improve Chinese companies' CSR commitments, especially with regards to state owned enterprises, China State-owned Assets Supervision and Administration Commission adopted the "Guidance of state owned enterprises CSR commitments" in 2008. Since then, all Chinese state owned mining enterprises were required to live up to the CSR commitments. Most of these companies refer to the ISO 26000 Guidance on Social Responsibility and United Nations Global Compact²².

The Order No.3 [2014] of the Ministry of Commerce of the People's Republic of China about the Measures for Overseas Investment Management, Article 20 states: "*the (Chinese) Enterprises should follow the local regulations, carry out CSR commitments, well protect local environment and labour rights*", which is a major difference comparing with the previous rule: Order No. 5 [2009] of the Ministry of Commerce of the People's Republic of China about the Measures for Overseas Investment Management. In respect of the principles set forth by the industrial associations and chamber of commerce, in 2004, China Chamber of Commerce of Metals Minerals & Chemicals Import & Exports draft "Guidance of Chinese Overseas Mining Investment CSR". Both the orders and guidance require Chinese companies to have a written CSR policy and to follow the local CSR related regulations when the companies invest or trade with foreign companies.

In 2013, China International Contractors Association announced their CSR proposal to all their members working on overseas projects. Apart from governmental regulations, Chinese companies also receive pressures from their overseas business partners, investors, and local concerns to incorporate CSR into their business strategy.²³ During the fifth

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- 19 Chambishi Metals, Business & Human Rights Resource Centre, 5 January 2012, <http://business-humanrights.org/en/chambishi-metals>
- 20 Ian Taylor, China's environmental footprint in Africa, 02.02.2007, <https://www.chinadialogue.net/article/show/single/en/741-China-s-environmental-footprint-in-Africa>
- 21 Shapi Shacinda, Reuters, Death toll in blast at Zambia mine climbs to 51, 21 April 2005, <http://business-humanrights.org/en/death-toll-in-blast-at-zambia-mine-climbs-to-51>
- 22 Kang Jitian, Trend of Mining Enterprises' Social Responsibility, Resources and Industries, June 2012, 14-3
- 23 Shuaihua Cheng, Social responsibility of Chinese investment in Africa, Trade Negotiations Insights Volume 10 - Number 3, 2011

China-Nordic Arctic Cooperation Symposium in Finland, many Chinese speakers highlighted that due to harsh natural conditions and fragile ecological environment, commercial activities in Arctic should be very carefully and well planned²⁴. All these initiatives, including the Chinese national legislation on labour, environment and mining safety is an improvement of the situation. For example, within the Chinese coal mining industry worker conditions have improved significantly. In 1995, 10,572 people died in the coalmines' accidents in China, and the number in 2005 is 5,491, and the number in 2014 is 931.²⁵

Chinese Investment for Greenland as an early stage mining country

In a strategy paper issued by the government of Greenland, the Greenland government aims at developing the mining industry to help mitigating the impact of global warming on fishing industry and boost economic growth. Yet, today exploration and exploitation of natural resources is still at a very early stage²⁶.

In order to develop a mining industry in Greenland, there are two obvious obstacles. The first is the vast land under challenging natural conditions and poor infrastructure. In Greenland, 56 thousand people live in an area of more than 2 million square kilometres, of which around 80% are covered by the ice²⁷. People can only work a couple of months on the ground in some places because of the cold weather, and there are no roads between the towns and settlements. Transport between the towns takes place by boat, ship, helicopter or aircraft, which makes Greenland less favourable than many other mining places in the world.

The second challenge is the labour force, which only includes 26,791 permanent residents (2011), and few of them have experience with mining industry.²⁸ Therefore, one may ask why Chinese companies should be interested in investing in Greenland while there are more mines in other places of world with better and easier access?

24 Jasim Sarker. China-Nordic symposium opens in Rovaniemi. 08 Jun, 2016. <http://www.finlandtimes.fi/national/2016/06/08/27669/Chinese-cooperation-in-arctic-dev-stressed>

25 Accidents reports, State Administration of Coal Mine Safety, updated December 2014, http://www.chinasafety.gov.cn/newpage/mkaj/sgtb/mkaj_sgtb.htm

26 Peter Levring, Greenland Bets on Mining as Global Warming Hits Fishing Industry, updated 17 April, 2013, <http://www.bloomberg.com/news/articles/2013-04-17/greenland-bets-on-mining-as-global-warming-hits-fishing-industry>

27 Statistics Greenland, 'Greenland in Figures', (2015)

28 Bent Ole Gram Mortensen, The Quest for Resources – the Case of Greenland, *Journal of Military and Strategic Studies*, Volume 15, Issue 2, 2013

Exploration is the first step to find mines. However, not many exploration projects have been done in Greenland. In the past 20 years, around 25 exploration companies covering 40 thousand sq.km area, which is only 1.8% of Greenland²⁹. In China, there are more than 1000 exploration companies, some of which have thousands employees. In addition, there are 27 universities in China, which have a bachelor or higher education in the area of resource exploration engineering, and sends thousands of graduates every year to the mining industry in China.³⁰ However in Greenland, the only university, Ilisimatusarfik in Nuuk doesn't offer any education program in mining³¹. By using all above human resources capability, it is possible for China to carry out large geological surveys. For every five years plan in China, there is a basic geological survey plan in Chinese territory, and there are totally 12 five years plans until now. By the end of 2014, Chinese exploration companies have completed 3 million square kilometres basic geological survey of Chinese territory in total, which is number one in the world³². In respect of completing difficult mining and infrastructure projects, Chinese workers have good reputation. In the history, Central Pacific Railroad in US used 12,000 Chinese workers to complete the most difficult and dangerous part³³. Sichuan Road and Bridge Group from China won the steelwork of Hålogaland Bridge in Norway in 2013. Recently, in January 2017, they started cable installation, and the completion of this 1,533 meters long bridge is now being predicted for summer 2018. The project owner is satisfied with the high efficiency of Chinese workers and engineers³⁴. And Chinese companies like to use Chinese workers as well due to the culture and communication identification. The large amount of qualified Chinese mining professionals is as important as Chinese capital investment, to the Greenlandic mining industry.

Although there are some concerns of attracting Chinese investment and using Chinese labour in Greenland, compliance needs to be done in order to develop mining industry in Greenland. In fact, Chinese investment is no different with other foreign investment

29 Geological Survey of Denmark and Greenland. News No. 34 <http://www.geus.dk/minex/minex-uk.htm>

30 Resources exploration engineering, Baidu encyclopaedia, updated April 2015, <http://baike.baidu.com/view/255099.htm>

31 University of Greenland, <http://uk.uni.gl/about-us.aspx>

32 Mao Xiaochang, the development process of basic geological survey in China, China Mining Conference 2014

33 George Kraus, "Chinese Laborers and the Construction of the Central Pacific," *Utah Historical Quarterly*, vol. 37, no. 1 (Winter 1969), pp. 41-57

34 News Desk, Halogaland Bridge in Norway prepares to start cable installation, January 17, 2017, <https://www.masterbuilder.co.in/halogaland-bridge-norway-prepares-start-cable-installation/>

in Greenland, like investments from Canada and Norway, and may thus contribute to Greenland's development of a sustainable mining industry.

Firstly, until 2014 there has only been three mines with Chinese involvement, while two of them have not used any Chinese employees, and the last one only use a few Chinese geologists for a short period every summer. For all three mines, two mines' contractors are from Denmark, and the drilling teams are all from Canada. Using Chinese labours in exploration phase will not affect local people's employment rate in Greenland since most of the people working on these projects are not from Greenland anyway.

Secondly, Chinese salary level will become higher, and it is not necessary Chinese salary is lower than Greenland's one. For example, a Chinese 3 years geologist's salary is around 6000-8000 Danish Kroner per month after tax, covered by full insurance equal to employees at government-affiliated institutions, and if they work aboard, normally will receive at least 1.5 times salary or even higher if they are sent to a place like Greenland, with free board, lodging, travel and company paid insurance. If calculating Greenlandic tax, the before tax monthly salary could reach 22,000 Danish Kroner³⁵. A 3 years drilling workers' salary is around 5000 Danish Kroner after tax per month in China, but a 10 years drilling workers' salary could reach 15,000 Danish Kroner per month after tax in China.³⁶ In December 2012, the Greenlandic Parliament adopted an Act on large-scale projects, which lays down a minimum wage of 80.41 Danish Kroner before tax; include the value of board and lodging, the costs of clothing, free travel, insurance, etc.³⁷. There is no doubt Chinese workers' salary will be more than the minimum wage under the large-scale act, and close to or even higher than the average salary in Nuuk, which is 19,237 Danish Kroner in April 2015.³⁸ It is thus highly likely that Chinese workers will not be lower than the general Greenlandic salary level.

Thirdly, keeping the salary in a reasonable level will help Greenland's economy develop sustainably, because if salary in mineral sector is generally higher than other sectors, it will

35 It estimates after tax salary is around 22,000 DKK, including free board and lodging.

36 Job website for mineral workers and experts in China, <http://www.georc.com/index.php>

37 Law No 25 of 18 December 2012 on large-scale projects (bygge- og anlægsarbejder ved storskalaprojekter)

38 Cost of Living in Nuuk, Greenland, updated April 2015, http://www.numbeo.com/cost-of-living/city_result.jsp?country=Greenland&city=Nuuk

make non-mineral sectors less competitive and may lead to a decline in other productive sectors³⁹.

At last, in order to start a mining project there is a need for a well functioning political system and a stable legal framework, including governmental approvals, safety report, environmental impact assessment, social impact assessment, including investors' CSR commitments agreed between the Greenland government and the investors, and a well functioning mining project is very much depended on Greenlandic legalisation and its enforcement. In Africa, some Chinese companies are criticized because they take advantages of low standards of local environmental protection system, which are against their CSR commitments.⁴⁰ However, Greenland should be confident to use its legal institutions and democracy system, for instances through the current system regarding pre-approval of work plan, regular onsite inspection and annual record of the completed work report, which also encourages Greenlandic local businessmen to set up joint venture or partnership enterprise with foreign investors to exchange knowhow and knowledge, in order to build a modern mining industry together with Chinese and many other investors in the world.

Conclusion

Greenland has a great potential with regards to mining, and a Chinese perspective on the approach of it has started with some early phase mapping and exploration projects by Chinese companies. Currently, declining global prices on minerals makes mining in Greenland even more difficult than before. However, early phase mapping and exploration should start right now, and when the prices on minerals go up again, more mature projects will be ready for investors as a mining project normally requires a few years of preparation, It will be easier for Chinese companies to be accepted in Greenland if they 1) apply an international level of CSR commitments, and 2) contribute with capital and experienced mining professionals to support the projects going forward at this difficult moment. A few small but good projects conducted by Chinese companies will give confidence to Greenland politicians as well as to the people to accept Chinese involvement. Moreover, it will also give confidence to Chinese companies that they can run large scale projects in Greenland.

39 Bent Ole Gram Mortensen, *The Quest for Resources – the Case of Greenland*, *Journal of Military and Strategic Studies*, Volume 15, Issue 2, 2013

40 Chen Shuaihua, Liang Guoyong, *Social responsibility of Chinese investment in Africa: What does it mean for EU-China Cooperation on development policy towards Africa?* *Trade Negotiations Insights*, Volume 10 - Number 3, 2011

Social Transformation and Normative Change Through CSR Standards? China's Engagement with International Labour Law in Domestic Guidance for the Textile Sector

Karin Buhmann¹

Abstract

Drawing on China's international and national Corporate Social Responsibility (CSR) engagement in the field of labour rights, this article discusses prospects for implementation and integration of international law standards through relatively non-politicized market oriented contexts. Contrary to the conventional approach in the West, China has explicitly engaged with CSR through hard law as well as guidance of a mixed regulatory character. In several cases this involves direct reference to international law standards among which some are in line with China's stance in international debates while others less so. Chinese labour law is comprehensive, but implementation lacks behind due to lack of knowledge and weak institutions. In this context, CSR is deployed as a modality to help transform legal requirements into practice in business operations. The article argues that what may look like skirting the law may in fact promote strengthened implementation that supports social transformation and integration of international norms.

Introduction

China's legal developments in the international labour rights field displays important progress in recent decades. In 1997, China signed the International Covenant on Economic, Social and Cultural Rights (ICESCR), and the Covenant was ratified by China in 2001. Generally, in the field of labour rights and beyond, official China remains more at ease with social and economic rights than with political rights. The International Covenant on Civil and Political Rights, signed by China in 1998, remains to be ratified. Trade unions in China are members of the state-organised trade union federation.² Accordingly, China made reservations to ICESCR with respect to trade union freedom. China has ratified four of the eight fundamental labour conventions of

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2 *Trade Union Law of the People's Republic of China*, article 2.

the International Labour Organisation (ILO) China has ratified four.³ Early national human rights White Papers emphasized ‘subsistence’ rights (social and economic human rights), and a somewhat defensive stand to the international human rights regime has been less prominent in relation to social and economic rights.⁴ Specific Human Rights Action Plans (issued 2009, 2012 and 2016)⁵ refer to a fuller range of international human rights: social, economic and cultural, civil and political, and and contain specific sections on vulnerable groups and international human rights engagement. While Chinese labour legislation is comprehensive,⁶ implementation is lacking behind partly due to inadequate information and institutions.⁷

Against this background, the level and form of China’s engagement with the Corporate Social Responsibility (CSR) agenda is striking. In Europe and the US, CSR is generally seen to be voluntary business self-regulation on firms’ social and environmental impact and therefore generally distinct from state regulation,⁸ although legal standards drawn from international human rights and labour law often play strong normative role in practice.⁹ By contrast, China’s approach to CSR is explicitly state-driven, clearly demonstrating a trend which has only recently become recognised in the general and especially Western dominated CSR literature.¹⁰ It is strongly informed by public policy objectives¹¹ and works through a combination of official guidance and detailed standards that have a law-

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- 3 ILO list of ratifications of fundamental conventions, http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:10011:0::NO::P10011_DISPLAY_BY,P10011_CONVENTION_TYPE_CODE:1,F, accessed 10 April 2016.
 - 4 Kent, Ann (1999) *China, the United Nations and Human Rights*, University of Pennsylvania Press; Sceats, Sonya with Shaun Breslin (2012) *China and the International Human Rights System*, London: Chatham House.
 - 5 State Council (2009) *National Human Rights Action Plan of China (2016-2020)*, Information Office of the State Council The People’s Republic of China, August 2016, available at http://english.gov.cn/archive/publications/2016/09/29/content_281475454482622.htm (accessed 24 January 2017).
 - 6 Ke Chen (2011) *Labour law in China*, Kluwer.
 - 7 Cooney, Sean (2007) China’s Labour Law, Compliance and Flaws in implementing institutions, *Journal of Industrial Relations* 49(5) 673-686.
 - 8 Matten, Dirk & Jeremy Moon (2008) ‘Implicit’ and ‘Explicit’ CSR: A conceptual framework for a comparative understanding of corporate social responsibility, *Academy of Management Review*, Vol. 33(2)404-424.
 - 9 Corporate Social Responsibility – what role for law? Some Legal Aspects of CSR. *Corporate Governance – The International Journal of Business in Society*, Vol. 6, No. 2: 188-202.
 - 10 Gond, J-P, N. Kang & J. Moon (2011) The government of self-regulation: on the comparative dynamics of corporate social responsibility, *Economy and Society* 40(4): 640-671
 - 11 Harper Ho, Virginia E. (2013) Beyond regulation: A comparative look at state-centric Corporate Social Responsibility & the law in China, *Vanderbilt Journal of Transnational Law* 46:375; Gond, J-P, N. Kang & J. Moon (2011) The government of self-regulation: on the comparative dynamics of corporate social responsibility, *Economy and Society* 40(4): 640-671.

like character in China's socialist mix of law and policy.¹² China's first indigenous CSR standard (CSC9000T), issued by the national council for the textile sector, refers to both national and international labour law standards. China's government financially supports the United Nations (UN) Global Compact,¹³ which offers CSR guidance based on international soft or hard law and covers all eight international core labour standards, including those covered by ILO conventions that have not been ratified by China.

This article takes its point of departure in the connection between Chinese law and policy on CSR. This engagement connects with policies on social change and economic growth, which in turn assume increased implementation of labour law standards within China. China's official engagement with national and international labour rights through CSR suggests that the CSR regime offers the government opportunities for dealing with certain issues in a manner which, being driven by external market demands and internal public law and policy implementation needs, is less politically sensitive than the traditional international law and policy human rights debate.

The article proceeds as follows: setting the context, section 2 provides an overview of the issues surrounding labour law, its implementation and protection offered by Chinese labour standards compared to international labour law that forms an important normative source for many social expectations on CSR. Section 3 addresses China's engagement with CSR in terms of law and policy. Section 4 introduces CSC9000T, China's first national CSR production process standard so far, focused on labour standards developed for the textile industry with an aim to be expanded to other sectors. Section 5 is a discussion of implications in an international and national perspective: what China's engagement with CSR in relation to international labour or human rights standards means, and prospects for CSC9000T's approach to promote labour law implementation. Section 6 concludes.

2. Context: Labour law and implementation

Like many other countries, China is facing significant social and environmental challenges in relation to unemployment, improving and developing social welfare and use of natural resources. These inform the local conception of what constitutes CSR

12 On Chinese political-legal regulation, see Keller, Perry (1994) Sources of order in Chinese law, *American Journal of Comparative Law* 42: 711-759.

13 The Global Compact is supported by the following donor countries: Chile, China, Colombia, Denmark, Finland, France, Germany, Italy, Korea, Norway, Spain, Sweden, Switzerland, Turkey and the United Kingdom (UN Global Compact website, *Global Compact Governance*, http://www.unglobalcompact.org/aboutthegc/stages_of_development.html).

and its social and regulatory implications.¹⁴ It also affects the government's usage of a mixture of governance strategies to promote sustainable growth in a context of economic reform and globalisation.¹⁵ Like Chinese state policy, CSR in China focuses on economic development, but improved implementation of labour rights is part this.¹⁶ Observers outside China have long paid particular attention such CSR-relevant issues as child labour, working conditions and general labour standards for products made in China.¹⁷ However, labour standards not only relate to CSR expectations of foreign markets, but also to compliance with China's detailed labour laws and the role that this plays for social change and economic growth throughout China.¹⁸

Insufficient implementation of labour standards not only harms the reputation of China and Chinese business on the global market, but also adversely affects the daily lives of employees and their families, and by implication their contributions to Chinese society. Like some other fields of law in China, inadequate implementation of labour law is claimed to be due to a combination of lack of knowledge of the law, overlapping and unclear law, and institutional weaknesses causing inadequate enforcement and weak

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- 14 Moon, Jeremy & Xi Shen (2010) CSR in China Research: Saliency, Focus and Nature, *Journal of Business Ethics* 94: 613-629; Kolk, Ans, Willemijn van Dolen & Ma Leiming (2015) Consumer perceptions of CSR: (How) is China different? *International Marketing Review* 32(5) 492-517
- 15 Vermander, Benoit (2014) *Corporate Social Responsibility in China*, Singapore: World Scientific Publishing; Lou Jianbo and Guo Xiuhua (2009) *The Core Idea of CSR and Its Practice in China*, in *Studies on Corporate Social Responsibility*, in Lou Jianbo (ed.), *Studies on Corporate Social Responsibility*, Beijing: Peking University Press:78; Blair, Margaret, Cynthia Williams & Li-Wen Lin (2008) The Roles of Standardization, Certification and Assurance Services in Global Commerce, Comparative Research in Law and Political Economy Research Report No. 12/2008, Toronto: Osgoode Hall Law School; Lin, Jolene (2012) Climate governance in China: Using the 'Iron Hand', in Richardson, Benjamin (ed.) *Local Climate Change Law: Environmental regulation in cities and other localities*, Edward Elgar, available at ssrn.com/abstract=1967830.
- 16 Backer, Larry Catá (2015) China's Corporate Social Responsibility with national characteristics: Coherence and dissonance with the global business and human rights project, in Martin, Jena and Karen E. Bravo (eds) *The Business and Human Rights Landscape: Moving Forward*, Looking Back, Cambridge University Press: 530-557]
- 17 Chan, Allan K.K., Po-Keung Ip and Kit-Chun Joanna Lam (2009) Business Ethics in Greater China, 88 *Journal of Business Ethics* 1:1-9.
- 18 Ke Chen (2011) *Labour law in China*, Kluwer; Ho, Virginia Harper and Huang Qiaoyan (2014) The recursivity of reform: China's amended Labor Contract Law, *Fordham International Law Journal* 37(4)973-1034.

governance at the local level.¹⁹ Indeed, insufficient knowledge of and respect for legal standards is a common denominator to many of China's CSR issues.²⁰

Chinese labour law provides better protection for workers than ILO conventions in a number of areas of relevance to common international market concerns with CSR, such as child labour, working hours, and overtime compensation. The minimum age for work is 16 in China²¹ (whereas it may be set as low as 12 in developing countries according to ILO Convention 138). Chinese law sets the limit for normal working hours at 44 hours²² whereas ILO accepts 48. For overtime pay, Chinese law requires up to 300 % normal remuneration²³ whereas ILO law requires an unspecified 'premium rate'. For these issues, a key challenge is therefore not the substantive legal standards, but their effective implementation.

3. Chinese law and policy on CSR

At the level of policy and principle, support for workers' rights accords particularly well with the political basis of China as workers' state.²⁴ Addressing labour standard weaknesses offers an option for China's government and businesses to work with a CSR issue that is of national economic and social significance. Due to the fact that many labour standards are also human rights, it also offers the government an opportunity to target some of the foreign human rights related critique.

19 Cooney (2007) *supra*; Ho, Virginia Harper and Huang Qiaoyan (2014) The recursivity of reform: China's amended Labor Contract Law, *Fordham International Law Journal* 37(4)973-1034; Van Rooij, Benjamin and Carlos Wing-Hung Lo (2010) Fragile convergence: Understanding variation in the enforcement of China's Industrial Pollution Law, *Law & Policy* 32(1)14-37; Chen, Jianfu, Yuwen Li, Jan Michiel Otto (2002) *Implementation of Law in the People's Republic of China*, Martinus Nijhoff.

20 Lu, Xiaohu (2009) A Chinese perspective: Business ethics in China now and in the future, 86 *Journal of Business Ethics* 4:451-461.

21 Labour Law of the People's Republic of China, art. 15 (adopted at the Eighth Meeting of the Standing Committee of the Eighth National People's Congress on July 5, 1994 and promulgated by Order No. 28 of the President of the People's Republic of China); Provisions on the Prohibition of Using Child Labor (promulgated by the State Council, effective April 15, 1991, amended Oct. 1, 2002, effective Dec. 1, 2002).

22 *Ibid.*, art. 36.

23 *Ibid.*, art. 44.

24 According to Article 1 of the 1982 Constitution, "The People's Republic of China is a socialist state under the people's democratic dictatorship led by the working class and based on the alliance of workers and peasants."

CSR has been embraced by the government at both central level and some provincial levels as a factor in the implementation of public law and policy related to working conditions, health and social security, and overall development. When China's government revised the Company Law in 2005, a reference to CSR was included. According to the revised article 5, "a company shall comply with the laws and administrative regulations, social morality and business morality. It shall act in good faith, accept the supervision of the government and the general public, and bear social responsibilities." The large town Shenzhen's public procurement rule include CSR elements, and Shenzhen's stock exchange has produced guidelines on CSR for traded companies. The government has introduced regulation specifically referring to CSR in the field of finance.²⁵ Since 2011 the State-Owned Assets and Administration Commission (SASAC) mandates that all Chinese State-Owned Companies (SOEs) publish an annual CSR report,²⁶ a process recognized to potentially promote organizational change by inducing self-regulation.²⁷

Already in 2006 China's government drew on CSR as part of its strategy to bring about former President Hu's policy of establishing a 'harmonious society'.²⁸ The central government authorized the Ministry of Commerce to work with several agencies to develop CSR standards,²⁹ and a number of initiatives have been launched by provincial or local governments to promote both legal compliance and action beyond what is required by the law, for example in relation to labour protection.³⁰ More recently, China's Chamber of Commerce of Metals, Minerals & Chemicals (CCCMC), which reports to the Ministry of Finance and Commerce (MOFCOM), in 2014 and 2015 issued two sets

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- 25 Ministry of Finance (2010) *Application Guidelines No. 4 for Enterprise Internal Control – Social Responsibilities, Guidelines on the Corporate Social Responsibility of Banking Institutions of China* (Ministry of Finance, China Securities Regulatory Commission, National Audit Office, China Banking Regulatory Commission and China Insurance Regulatory Commission, No. 11, April 15, 2010).
- 26 Wang Chengbo (2013) *The Rise of Reporting in China: How State-Owned Companies can dig deeper*, <http://www.bsr.org/en/our-insights/blog-view/the-rise-of-reporting-in-china-how-state-owned-companies-can-dig-deeper>, last accessed 25 October 2015.
- 27 Hess, D. (1999) Social Reporting: A reflexive law approach to Corporate Social Responsiveness. *Journal of Corporation Law*. Fall 1999, 25, 1: 41-84; Gond, J-P and O. Herrbach (2006) Social Reporting as an organisational learning tool? A theoretical framework. *Journal of Business Ethics* 65:359-371.
- 28 China Development Brief (2006) *'Responsibility' standard for China textile industry emerges from EU project*, 1 August 2006, <http://www.chinadevelopmentbrief.com/node/756> visited on 22 March 2016.
- 29 Blair, Margaret, Cynthia Williams & Li-Wen Lin (2008) *The Roles of Standardization, Certification and Assurance Services in Global Commerce*, Comparative Research in Law and Political Economy Research Report No. 12/2008, Toronto: Osgoode Hall Law School:352
- 30 Harper Ho, Virginia E. (2013) Beyond regulation: A comparative look at state-centric Corporate Social Responsibility & the law in China, *Vanderbilt Journal of Transnational Law* 46: 375.

of guidelines³¹ setting specific directives for Chinese mining sector firms. The Guidelines explicitly refer to the UN Guiding Principles on Business and Human Rights (UNGPs),³² which were adopted by the UN Human Rights Council in 2011. China's most recent Action Plan on Human Rights (2016-2020) explicitly urges Chinese enterprises that operate overseas "to abide by the laws of the countries in which they are stationed, and fulfill their social responsibilities in the process of conducting foreign economic and trade cooperation, providing assistance and making investment".³³

China's government is one of a small number of governments which fund the head office of the UN Global Compact Office. Located in New York City, the office is in charge of the day-to-day management and global dissemination of the Global Compact's ten principles on human rights, labour rights, environment and anti-corruption, all based on international declarations and treaties as normative sources. In this China joins company with mainly Nordic and European countries that mostly have relatively good human rights records and which typically have strong political views on political human rights in other countries.³⁴ By actively supporting the UN Global Compact Office, China actively supports the promotion of all ten Principles, including those that refer to labour rights conventions not ratified by China.

China not only supports the Global Compact as a global governance modality but also at the national level. The Global Compact has an office in Shanghai, and in November 2005 the first ever 'Global Compact Summit' to take place outside UN headquarters was held in Shanghai with the support of China's Government. Hosted in collaboration

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- 31 The China Chamber of Commerce of Metals, Minerals & Chemicals (2014) *Guidelines for Social Responsibility in Outbound Mining Investment*, available at https://www.globalwitness.org/sites/default/files/library/CCCMC%20Guidelines%20for%20Social%20Responsibility%20in%20Outbound%20Mining%20Investments%20Oct%202014%20CH-EN_1.pdf (accessed 24 January 2017); The China Chamber of Commerce of Metals, Minerals & Chemicals (2015) *Chinese Due Diligence Guidelines for Responsible Mineral Supply Chains*, available at <https://mneguidelines.oecd.org/chinese-due-diligence-guidelines-for-responsible-mineral-supply-chains.htm> (accessed 24 January 2017)..
- 32 Human Rights Council (2011) *Guiding Principles on Business and Human Rights: Implementing the United Nations 'Protect, Respect, Remedy' Framework*, Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises. UN Doc. A/HRC/17/31, 21 March 2011.
- 33 *National Human Rights Action Plan of China (2016-2020)*, Information Office of the State Council The People's Republic of China, August 2016, available at http://english.gov.cn/archive/publications/2016/09/29/content_281475454482622.htm (accessed 24 January 2017).
- 34 The Global Compact is supported by the following donor countries: Chile, China, Colombia, Denmark, Finland, France, Germany, Italy, Korea, Norway, Spain, Sweden, Switzerland, Turkey and the United Kingdom (UN Global Compact website, *Global Compact Governance*, http://www.unglobalcompact.org/aboutthegc/stages_of_development.html).

with Shanghai's Municipal Government, China Enterprise Confederation, the All-China Federation of Industry and Commerce and SASAC,³⁵ the Shanghai Global Compact Summit was not only an event for firms and the UN but a political event in China. In supporting and co-organising it, the national and local governments explicitly supported and encouraged firms to respect the full range of core labour rights and human rights embodied in the Global Compact Principles.

Leading up to the Shanghai Summit, at the occasion of a high-level Global Compact Forum the Vice-Chairman of China's National People's Congress expressed a hope that the Compact's ten principles would be turned into practice and the view that "chief executive officers (...) understand that they had a responsibility to work on behalf of society and the people, and that they should pay more attention to human rights, environment and anti-corruption efforts".³⁶ Underscoring the potential to contribute to social and economic policy objectives, he observed that the Compact's implementation in China would affect the country's development and transition from a central planning system to a socialist market system in which the market plays a fundamental role in resource allocation.³⁷

4. CSC9000T

The CSR process guidance standard SA8000 that was developed by the international NGO Social Accountability International in 1997 has been adopted by a number of Chinese companies. That is thought to be because it is well suited for small and medium sized companies and is widely known and recognised outside China in countries that source from China.³⁸ SA8000 is an auditable certification standard but has been criticized for a practical emphasis on 'ticking boxes' rather than promoting sustained change in production practices.³⁹ Given the need for Chinese businesses to learn about

35 [unglobalcompact.org, UN Global Compact announces Shanghai Declaration](http://www.unglobalcompact.org/newsandevents/news_archives/2005_12_01b.html), http://www.unglobalcompact.org/newsandevents/news_archives/2005_12_01b.html, visited 22 March 2016.

36 Press Release (2004), *UN Global Compact Leaders Summit: Global Compact summit concludes with emphasis on need to fight corruption*, 24 June 2004, UN Doc. ECO/70 <<http://www.un.org/News/Press/docs/2004/eco70.doc.htm>> last visited 15 January 2016.

37 Press Release (2004), *UN Global Compact Leaders Summit: Global Compact summit concludes with emphasis on need to fight corruption*, 24 June 2004, UN Doc. ECO/70 <<http://www.un.org/News/Press/docs/2004/eco70.doc.htm>> last visited 15 January 2016.

38 Lin, Li-Wen (2006) Corporate Social Accountability standards in the global supply chain: Resistance, reconsideration and resolution in China, 15 *Cardozo Journal of International and Comparative Law* 2:321-370; SA8000 certification statistics as of 30 June 2015, <http://www.saasaccreditation.org/?q=node/23> accessed 10 March 2016.

39 Hiscox, MJ, Claire Schwartz, and Michael W. Toffel (2008) Evaluating the impact of SA8000 Certification, *Harvard Business School Working Paper Series* 08-097.

the requirements of China's labour law in order to better implement the law, China's National Textile and Apparel Council (CNTAC) opted for developing its own standard with a stronger focus on learning.⁴⁰

Developed with financial and technical support from the EU, CSC9000T was launched in 2005 as a Chinese CSR process guidance standard. CSC9000T was developed with the cooperation of the China Federation of Labour Unions, which is state-based and China's only trade union.⁴¹ As many other Chinese industry associations, the host organization CNTAC, a national non-profit organization for textile related industries,⁴² is closely associated with the government (including SASAC). The development and implementation of CSC9000T has received support from the National Development and Reform Commission, the Ministry of Industry and Information Technology, and the Ministry of Human Resources and Social Security.⁴³ As a result, CSC9000T may be perceived as government sanctioned even if not directly developed by the government.⁴⁴

So far the CSC9000 standard applies to the textile sector (hence the T in CSC9000T). It was introduced with a general aim to be elaborated for application in other sectors beyond textile. Steps have been taken to expand the standard to the tea industry.⁴⁵

CSC9000T comprises normative and operational principles accompanied by guidance for implementation and a process for self-assessment. The normative principles are based on Chinese labour statutes and regulations as well as international conventions noted to be of relevance to work in the textile sector.⁴⁶ They refer to national and international law on labour and human rights, which include the Universal Declaration of Human

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- 40 China Development Brief (2006) *'Responsibility' standard for China textile industry emerges from EU project*, 1 August 2006, <http://www.chinadevelopmentbrief.com/node/756> visited on 26 September 2015; CSC9000 (2009a) *CSC 9000T Quarterly* Issue 1, Spring 2009, http://www.csc9000.org.cn/PDF/CSC9000T_Quarterly_01.pdf, last visited 26 March 2016.
- 41 CNTAC CSC9000T homepage, <http://www.csc9000.org.cn/en/> visited 26 March 2016.
- 42 International Trade Centre (no year) *CSC9000T At a glance*, available at www.intracen.org/WorkArea/DownloadAsset.aspx?id, last accessed 2 April 2016.
- 43 CSC9000 (2009b) *CSC9000T Quarterly* Issue 4, Winter 2009, http://www.csc9000.org.cn/PDF/CSC9000T_Quarterly_04.pdf visited 26 March 2016.
- 44 Also the EU assisted financially with support under a five-year EU-China Trade Programme with the objective of supporting China's integration into global trade. See China Development Brief (2006) *'Responsibility' standard for China textile industry emerges from EU project*, 1 August 2006, <http://www.chinadevelopmentbrief.com/node/756> visited on 26 March 2016.
- 45 CSC9000 2011 *CSC9000 (2011) CSC9000 Quarterly* Issue 8, Spring 2011, http://www.csc9000.org.cn/PDF/CSC9000T_Quarterly_08.pdf visited 26 March 2016.
- 46 International Trade Centre (no year) *CSC9000T At a glance*, available at www.intracen.org/WorkArea/DownloadAsset.aspx?id, last accessed 2 April 2016.

Rights, the UN Convention on the Rights of the Child, ICCPR, ICESCR, and the UN Convention on the Elimination of all Forms of Discrimination against Women.

The social principles form the main body of CSC 9000T. The majority of specific standards relate to occupational health and safety. Others cover housing/work place accommodation; forced labour; child labour; non-discrimination; cultural and religious rights; remuneration including minimum pay and salary payment; working hours; and the freedom of association and collective bargaining. Of the eight core labour (ILO) conventions, seven are referenced: C29 and C105 on forced labour, C138 and C182 on child labour, C87 and C98 on the freedom of association and collective bargaining, and C111 on non-discrimination. In other words, CSC9000T references the four core conventions that China has not ratified. In addition to the core conventions, the standard references ILO's C169 on indigenous peoples' rights and C184 on occupational health and safety (see fig. 1).

Operational principles guide firms to establish a CSR management system to comply with Chinese labour law. Thus, CSC9000T aims to transform legal standards into management practices. For this purpose, CSC9000T is accompanied by a reporting guideline and a self-assessment form⁴⁷ specifying components of the normative principles. An initial assessment is undertaken by a third party with the objective of understanding the enterprise's current labour law performance and propose corrective actions plans. That is followed by training of staff and regular re-assessment of implementation of the standards.

47 *CSC 9000T Self-assessment form*, http://www.csc9000.org.cn/PDF/CSC9000T_Self-Assessment_ENG_2005.pdf visited 27 March 2016 (Chinese 2008 version available at http://www.csc9000.org.cn/PDF/CSC9000T_Self-Assessment_CN_2008.pdf).

CSC 9000T issue	Reference to international convention
Social/Human Rights	
Housing and sanitary facilities in place	
Gender policies and best practices	
Cultural/religion rights	ILO 169
Conditions of work	
Training on safety issues	
Safety equipments and emergency	
Promotion/enhancement of education	
Gender issues	
Health and safety of women	
Work/Labor Rights as Conditions of Work	
Safety at work	ILO 184
Safe work environment kits	
Training requirements on site	ILO 29 & 105
No forced labor	
No use of physical violence	
Child labor prohibited	ILO 182
Work/Labor Rights as Conditions of Employment	
Condition of employment	
Contract labour policies and practices	
Transparency of employment practices	
Written contracts	
Leave days clearly specified	
Timely payment of wages	
Minimum wage requirements	
Level of wage	
Child labor and minimum age	ILO 138
Equal remuneration (ILO 100)	
Maximum number of working hours set	
Local hiring and purchasing promoted	
Work/Labor Rights - Empowerment of Workers	
Freedom of association	ILO 87
Collective Bargaining	ILO 98
No discrimination at work	ILO 111
Joint committes and unions	

Figure 1: CSC9000T and ILO convention references

5. Discussion

Access to the international market is an important source of income for China's textile and apparel industry, which employs around twenty million workers in several thousand enterprises, affecting the livelihoods of 100 million rural people. The critique against SA8000 for emphasis on 'box ticking' rather than actual change in operational practices constitutes a risk to Chinese producers. This occurs because they may lose business and face reputational damage if their products are discovered to not be in accordance with certified standards claiming compliance with international and national labour law. Implementation of labour law is also a core issue in the national context, not just for formal reasons but because of the substantive concerns for employees and their welfare that inform labour law in all countries. This raises two main questions: the potential implications of CSC9000T's reference to international labour law; and the effectiveness of the 'learning approach' to promote enhanced implementation of labour law.

Some observers describe CSC9000T as a weak version of SA8000 due to the absence of an explicit provision on the freedom of association, living wage allowances and freedom from discrimination on political affiliation or sexual orientation.⁴⁸ SA8000 recommends that employees be given the right to form and join trade unions and bargain collectively. For operations in countries where these freedoms are limited under national law (as is the case in China that recognises the right to organise but limits this to trade unions under the national All-China Federation of Trade Unions), SA8000 recommends that as an alternative, workers should be allowed to freely elect representatives. Others see CSC9000T as a means to assert Chinese control over workers' rights in Chinese production facilities, streamline the multiple CSR codes and auditing procedures applied in the country and improve China's labour standards in the eyes of the global community and thereby reducing calls for protectionism against China.⁴⁹

For the current purposes the key issue is whether the reference to the international instruments is mere window-dressing, or whether it offers signs of sincere engagement with the international standards in a context that is less politicized than much of the international human rights debate on China has been, and in which the international instruments may come to make operational sense in a Chinese context. Senior health

48 Fibre2fashion.com (2011) *Briefing on the Chinese garment industry*, <http://www.fibre2fashion.com/industry-article/market-research-industry-reports/briefing-on-the-chinese-garment-industry/briefing-on-the-chinese-garment-industry6.asp> (last accessed 5 March 2016).

49 Fibre2fashion.com (2011) *Briefing on the Chinese garment industry*, <http://www.fibre2fashion.com/industry-article/market-research-industry-reports/briefing-on-the-chinese-garment-industry/briefing-on-the-chinese-garment-industry6.asp> (last accessed 5 April 2016).

and safety officials have expressed concern at the lack of enforcement of occupational health and safety legislation.⁵⁰ Some of those concerns have been sought to be addressed through the 2007 Labour Contract Law, but the implementation of workers' rights and occupational health and safety standards remains a problem that is recognized by authorities at central level.⁵¹

In September 2014 CNTAC and ILO's Office for China and Mongolia issued a joint report on labour protection of interns in the Chinese textile and apparel industry.⁵² It was noted that China is currently preparing to ratify ILO forced labour conventions No. 29 and No. 105.⁵³ The report found 14,8 percent of interns to be carrying out involuntary and coercive work during their internships constituting a situation of forced labour, with forced labour understood to cover any type of economic performance not freely undertaken or from which the worker is not free to extricate him or herself. Observers on China's omission to ratify Conventions 29 and 105 have tended to associate the relevance with prison labour and China's labour reform system, parts of which have long been controversial from the perspective of international human rights.⁵⁴ The reference to those conventions in the Chinese CSR context suggests that the perception of labour rights problems affecting individuals in the specific context of Chinese industry opens doors to piloting support for international instruments that have not yet been ratified. This would accord with the Chinese practice of testing law reforms in limited contexts before fully-fledged change.⁵⁵

With the exception of trade union freedom that simply does not exist under Chinese law, effective implementation of China's national labour law also for practical purposes means increased national level implementation of major international labour and human rights standards related to workers and working conditions. Active support

50 Blair, Margaret, Cynthia Williams and Lin Li-Wen (2008) The new role for assurance services in Global Commerce, *Journal of Corporation Law*, Vol. 33: 325-360, esp. at footnote 106.

51 Ho, Virginia Harper and Huang Qiaoyan (2014) The recursivity of reform: China's amended Labor Contract Law, *Fordham International Law Journal* 37(4)973-1034.

52 ILO and CNTAC (2014) *Labour protection of interns in Chinese textile and apparel enterprises report*, Beijing.

53 ILO (2014) *ILO and the CNTAC launch a report on labour protection of interns in Chinese textile and apparel enterprises*, Press release, 12 September 2014, http://www.ilo.org/beijing/information-resources/public-information/press-releases/WCMS_306617/lang--en/index.htm (last accessed 5 April 2016).

54 Business Social Compliance Initiative (2013) *BSCI position on prison labour in China*, <http://www.bsci-intl.org/news-events/bsci-publishes-position-paper-prison-labour-china> (last accessed 5 April 2016).

55 Zhang Xin (2006) *International trade regulation in China: Law and Policy*, Hart: 320-321.

of standards that reference ILO conventions on trade union freedoms would seem to counter the assumption that China is simply seeking to shape CSR in its own image. With reservations already in place for the pertinent CESC provisions, there would be no reason for CNTAC to explicitly refer to ILO conventions 89 and 98 as international standards informing CSC9000T. Engagement with political labour rights in contexts that are seen as business-oriented and as relating to public policy objectives rather than as human rights *per se* offers a testing ground similar to other forms of piloting reforms. The national public policy and economic gains may be generating political willingness to test a softer stance on the issue than that which has been adopted vis-à-vis international critique.

For the potential of CSC9000T to assist Chinese firms in implementing national labour standards and, by implication, many corresponding international standards, it is important that the government at central and local levels as well as individual businesses and their international relations and observers retain focus on the importance of transforming the law in the books into effective implementation in business practice. Given documented problems with auditing systems due to cheating and falsification of records,⁵⁶ the focus on learning rather than certification may not necessarily be the weaker or less effective alternative for inducing change. Because of the implementation problems and sometimes limited understanding of labour law, some Chinese companies perceive that approach as conducive to more sustained change than a certification approach.⁵⁷ In this respect, the potential competition between SA8000 and CSC9000T may also serve as a driver. As long as business opportunities, at least on significant parts of the global market, are connected to documented respect for CSR standards, the better known and certifiable SA8000 remains a strong card for Chinese businesses seeking international business relations. The learning approach of CSC9000T may enable businesses to undertake the necessary reforms and therefore effectively assist them in living up to the requirements for SA8000 certification. Given the current the level of understanding and knowledge of labour law, and acknowledged weaknesses of the formal monitoring system, the learning approach may indeed be the optimal approach. In the longer term when learning has evolved, effectiveness will likely need to be supported by stronger enforcement measures, including effective sanctions by the market as well as legal institutions.

56 Fibre2fashion.com (2011) *Briefing on the Chinese garment industry*, <http://www.fibre2fashion.com/industry-article/market-research-industry-reports/briefing-on-the-chinese-garment-industry/briefing-on-the-chinese-garment-industry6.asp> (last accessed 5 April 2016).

57 Compare Blair, Margaret, Cynthia Williams and Lin Li-Wen (2008) The new role for assurance services in Global Commerce, *Journal of Corporation Law*, Vol. 33: 325-360 at 352.

6. Conclusion

Drawing on China's legal and policy engagement with CSR and the country's first and so far most comprehensive national CSR standard, CSC9000T, this contribution has discussed whether China's engagement with labour rights in the context of CSR offers prospects for enhanced implementation of labour rights in a context with weak institutions, and for labour rights traditionally deemed to be sensitive in view of their human rights connections.

China's engagement with the UN Global Compact indicates that China's mixed relationship with international human rights does not keep that emerging economy from endorsing rights that are sensitive in a political context if they occur in another and less political context, such as business practices.

China's approach to CSR deploys a combination of legal regulation, policy and guidance for firms, developed by organisations with connections to the political system. Like its international counterpart SA8000, the Chinese CTC9000T standard refers to both national law and international labour standards, albeit with some differences. Increased respect for labour standards has much to contribute to China's economic and social development as well as global market access. Addressing labour standards offers an option to work with a CSR issue that is of national economic and social significance.

By applying CSC9000T, China's textile industry is experimenting with CSR from the perspective of learning and establishing a CSR process standard tailored to China's polity and the particular challenges and developmental as well as market opportunities connected to enhanced respect for labour law. Through the close connection between labour standards and human rights, CSC9000T offers an opportunity for the industry as well as the government to address issues that go beyond the market. Referring to international law instruments related to fields which have met with considerable hesitation from the political perspective related to China's official implementation, CSC9000T offers not only Chinese businesses CSR opportunities, but also offers China a path towards increased implementation of both national and international law.

Overall, China's CSR approach appears to offer opportunities for implementation of labour rights as well as engagement with certain sensitive issues in a de-politicised manner that may contribute to improved understanding and appreciation in practice, starting in the work place.

Viewing the Labor Law Reform in China From a Perspective of Legal Globalization

By Ya-wen Xu and Qian Cheng¹

Abstract

After the cold war, the trends of legal globalization became more and more obvious. People's Republic of China (PRC) began its connection with the international community and the global market, and its legal reform after the launch of the "reform and opening-up" policy. By examining China's labor law reform, we can see how legal globalization has influenced China's legal system. China introduced and transplanted many institutions, terms of ILO conventions during its labor law reform. It also accepted many principles and conceptions of ILO conventions in its labor law and constitutional law, which would shape China's labor law reform. Multinational corporations (MNC) and transnational civil society organizations (TCSO) influenced Chinese labor law reform through lobbying, advocacy, public education, and litigations. Informal norms such as Corporate Social Responsibility standards developed by MNCs and TSCOs also inspired Chinese legislators to improve China's labor law and Chinese SCOs or business associations to develop labor standards to fill the gaps in China's labor law and regulations. In conclusion, in the age of legal globalization, the labor law reform in China is a kind of legal transplantation. International norms, actions by multinational corporations and transnational civil society, and their informal norms together constitute the force which promotes the transplantation and the reform of China's legal system.

Key Words: legal globalization, global governance, labor law, law reform

Foreword

After the cold war, the trends of economic globalization became more and more obvious: international investments and transactions developed, international market of trade and finance expanded. As the development of economic globalization, legal globalization was also noticed by more and more scholars. First, international organizations and super-national organizations challenged the classic world system based on the sovereignties of nation-states. Transnational economic organizations such as the World Trade Organization, the World Bank, and the International Monetary Fund created various

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international norms in economic areas. The activities of TCSOs had significant impacts on legal affairs in some countries and regions. For instance, the Ford Foundation and the Open Society Institute widely participated in the rule of law programs in Asia, Latin America, and Central Europe. Hence, the concept of “global governance,” consisted by states, global market, and transnational civil society, was developed.² Second, human rights, environmental protection, international crimes, and terrorism became global issues, which needed international cooperation. Even when these issues were handled by governments as domestic affairs, there were international interventions.

People’s Republic of China (PRC) began its “reform and opening-up” policy in 1978. The “reform and opening-up” policy meant that China launched a comprehensive reform in the field of politics, economy, and law, to establish a “socialistic market economy” and a “socialistic legal system;” and resumed its exchange and cooperation with the international community, and participation in the global market. Reform and opening-up are the two sides of one coin. Because only if China establish a market economy can its market be integrated with the global market; only if China’s legal system meet the lowest international standards of human rights and the rule of law, may China attract foreign investments. International conventions and good practices of foreign countries were a reference for China to establish its modern legal system.³ The “reform and opening-up” was the beginning of China’s involvement in globalization. Hence the examination of China’s legal reform since the “reform and opening-up” and its relations with international norms would help us understand the relations between law and globalization.

There are several reasons for choosing labor law as our research subject. First, labor issue is an important international issue. UN, ILO, WTO have created various international norms on this issue. Second, labor law is related to human rights,⁴ which makes the labor law reform an important issue for international human rights organizations. Third, labor law has enormous impacts on the economy. As the second-largest economy, China’s labor

2 See The Commission on Global Governance, *Our Global Neighborhood*, available at <http://www.gdrc.org/u-gov/global-neighbourhood/> (last visited April. 30, 2017).

3 China began its modern legal reform in the late Qing dynasty. The throne fell in 1911, however, the reform continued in the era of the Republic of China. With the aids of foreign legal scholars, Chinese lawyers trained in the Western countries and in Japan drafted laws for the new regime. China adopted a civil law system influenced by the German, French, and Japanese laws. After the establishment of the People’s Republic of China in 1949, the Soviet legal system became a significant source which inspired China’s legal reform. See Percy R. Luney, Jr., *Traditions and Foreign Influence: Systems of Law in China and Japan*, *Law and Contemporary Problems*, 1989, Vol. 52, No. 2:pp. 129-150.

4 See Ye Jingyi, Wei Qian, Jingji, Shehui he Wenhua Quanli Guoji Gongyue yu Laodongquan de Baohu, *Beijing Daxue Xuebao (Zhaxue Shehui Kexue Ban)*, 2004, Vol. 41, No. 2: pp.87-95.

law reform attracts great attentions by multinational enterprises in different industries. In a word, the labor law reform shows some key aspects of legal globalization, which makes it a perfect subject for our study.

Chinese Labor Law Since the “Reform and Opening-up”

The “reform and opening-up” started a new era of China’s legal history. Since then China’s labor law has developed rapidly. China’s labor legal system consists of related constitutional articles, laws and regulations.

Constitutional Law

There are some general articles on labor issues in China’s Constitutional Law, which provide fundamental protections for labor rights. The Constitution of 1978 was the valid Constitution when China launched the “reform and opening-up” policy. The Article 45 of the 1978 Constitution recognized the liberty of assembly, association and strike.⁵ The Article 48 stated that “citizens of the People’s Republic of China have the right to work.” The Article 49 stated that “workers have the right to rest.”⁶ The Article 53 stated that “men and women shall receive equal pay for equal work.”⁷

The Constitution of 1982 was a new Constitution after the “reform and opening-up,” and also the current valid constitution. In the Constitution of 1982, the article on “liberty of strike” was deleted.⁸ Some scholars interpreted it as the deprivation of the right to strike.⁹ However, some other scholars argued that the constitution might not state all types of rights. The Constitution did not clearly recognize the right to strike, neither forbid it. Hence this amendment had no impacts on the existence of the right to strike.¹⁰ The

5 Xian Fa [the Constitution] of 1978, art. 45.

6 Id., art. 48, art. 49.

7 Id., art. 53.

8 Xian Fa [the Constitution] of 1982, art. 35.

9 See Liu Yun-ya, Zhang Li, A Discussion on Legislation of Right to Strike in China, *Journal of Nanjing Forestry University (Humanities and Social Sciences Edition)*, 2007, Vol.7, No. 1: pp33-39. Wen Qing-hong, Yang Fang, On the Lack of Constitutional Rights and Safeguarding the Peasant Workers Rights and Interests, *Journal of Yangtze University (Social Sciences)*, 2006, Vol. 29, No. 6: pp70-73. Li Xianggang, Lun Gongmin Bagongquan de Xianfa Diwei, *Qian Yan*, 2005, No.7: pp163-167.

10 See Yang Yan-fei, The Implicit Existence of Strike Right in Constitution, *Journal of Heilongjiang Administrative Cadre Institution of Politics and Law*, 2009, No. 5:pp13-15. Liu Xiao-ya, The Analysis on the Justification Providing the Right to Strike as a Constitutional Right, *Western Law Review*, 2009, No. 5: pp26-30. Long Sheng, Right to Strike in the Chinese Constitution from the Perspective of Legal Interpretation, *Journal of Hebei Normal University (Philosophy and Social Sciences Edition)*, 2011, Vol. 34, No.3: pp82-87.

problem is that there are no specific rules on the right to strike in current Chinese laws. So even people have this right, it is difficult to exercise it.

The Article 48 of 1982 Constitution was about sexual equality. Besides equal remuneration, it added a clause stating that “selects cadres from among women,”¹¹ which was a great advance. In 2004 China’s National People’s Congress (NPC) passed an amendment stating that “The state respects and protects human rights.”¹² This was a significant event in Chinese legal history. This amendment means that the labor issues which are ignored by current labor law can refer to human rights law; the international human rights law will have greater impacts on China’s legal system, including China’s labor law.

Laws and Regulations

In China’s context, laws are the norms passed by the NPC or the standing committee of NPC. In this case, since the reforming and opening-up China’s major labor laws include the Trade Union Law (1992), the Labor Law (1994), the Production Safety Law (2002), the Labor Contract Law (2007), the Employment Promotion Law (2007), the Labor Disputes Mediation and Arbitration Law (2007), the Social Insurance Law (2010), and the Law on the Prevention and Control of Occupational Diseases (2011). Among these laws, the Labor Law and the Labor Contract Law are the core of China’s labor legal system. Besides laws, there are other norms such as administrative regulations issued by the State Council and the departmental regulations issued by the ministries. There are hundreds of labor regulations in China. Between 1979 and 1994, more than 160 labor regulations were issued.¹³ These regulations played important roles in China’s labor legal system and had consisted the main norms on labor issues before the Labor Law was passed. Because labor laws in China are very general and abstract, specific regulations are highly needed. Moreover, as China’s economy has been developing rapidly, China’s labor system has to change accordingly. In this case, regulations which are more flexible would be more useful tools for China’s law system.¹⁴ Also, China has been integrating regulations into laws. For example, the Labor Law and the Labor Contract Law are the two most important achievements of this kind of integration.

11 id. art. 48.

12 Xian Fa [the Constitution] of 2004, art. 33.

13 See Kinglun Ngok, The Changes of Chinese Labor Policy and Labor Legislation in the Context of Market Transition, *International Labor and Working Class History*, 2008, Vol. 73, Issue1: pp 45-64.

14 Id.

The Impacts of ILO Standards

One goal of the enactment of the Labor Law was to make China's labor system meet international standards.¹⁵ So Labor Law and other laws on labor issues in China learned a lot from international labor standards.¹⁶ For instance, according to the provisions of the Article 36 of Labor Law, laborers shall work for no more than 8 hours a day and no more than 44 hours a week on the average. Later in 1995, the state council issued a regulation stating that laborers shall work for no more than 40 hours a week on the average. This working hour system was developed according to the ILO conventions, Hours of Work (Industry) Convention and Forty-Hour Week Convention, even though China did not ratify them.

ILO was the most professional and authoritative international organization that creates international labor standards. Since established in 1919, it has created 189 conventions, 6 protocols, 204 recommendations, which constitute the international labor standards system. There are 8 fundamental ILO conventions which are widely accepted as "core" labor standards. These conventions include (1) the Freedom of Association and Protection of the Right to Organise Convention (No. 87) and the Right to Organise and Collective Bargaining Convention (No. 98), which address freedom of association and collective bargaining; (2) the Forced Labour Convention (No. 29) and the Abolition of Forced Labour Convention (No. 105), which address forced labor issue; (3) the Equal Remuneration Convention (No. 100) and the Discrimination (Employment and Occupation) Convention (No. 111), which address anti-discrimination issue; and (4) the Minimum Age Convention (No. 138) and the Worst Forms of Child Labour Convention (No. 182), which address child labor issue.

China is a founding member state of ILO. After 1949 the Beijing government suspended its connection with ILO. In 1971, according to the resolution of the General Assembly of the United Nations, ILO recognized the status of the Beijing government as the sole legitimate representative of China. In 1983 China formally resumed its participation in ILO. Currently China has ratified 4 fundamental ILO conventions, namely the Equal Remuneration Convention (No. 100), the Discrimination (Employment and Occupation) Convention (No. 111), the Minimum Age Convention (No. 138), and the Worst Forms of Child Labour Convention (No. 182). It also has ratified 2 priority ILO conventions, and 20 technical ILO conventions, 3 of which have been denounced.

15 Id.

16 See Mary E. Gallagher, Baohua Dong, *Legislating Harmony: Labour Law Reform in Contemporary China*, available at <http://erb.umich.edu/Research/Initiatives/colloquiaPapers/GallagherRevisedPaperJan08.pdf>, (last visited April. 30, 2017).

To examine the relations between China's labor law and fundamental ILO conventions would be a way to understand the impacts of international law on China's labor law.

*Fundamental*¹⁷

Convention	Date
C100 - Equal Remuneration Convention, 1951 (No. 100)	02 Nov 1990
C111 - Discrimination (Employment and Occupation) Convention, 1958 (No. 111)	12 Jan 2006
C138 - Minimum Age Convention, 1973 (No. 138) <i>Minimum age specified: 16 years</i>	28 Apr 1999
C182 - Worst Forms of Child Labour Convention, 1999 (No. 182)	08 Aug 2002

Governance (Priority)

Convention	Date
C122 - Employment Policy Convention, 1964 (No. 122)	17 Dec 1997
C144 - Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144)	02 Nov 1990

Technical

Convention	Date
C011 - Right of Association (Agriculture) Convention, 1921 (No. 11)	27 Apr 1934
C014 - Weekly Rest (Industry) Convention, 1921 (No. 14)	17 May 1934
C016 - Medical Examination of Young Persons (Sea) Convention, 1921 (No. 16)	02 Dec 1936
C019 - Equality of Treatment (Accident Compensation) Convention, 1925 (No. 19)	27 Apr 1934
C022 - Seamen's Articles of Agreement Convention, 1926 (No. 22)	02 Dec 1936
C023 - Repatriation of Seamen Convention, 1926 (No. 23)	02 Dec 1936
C026 - Minimum Wage-Fixing Machinery Convention, 1928 (No. 26)	05 May 1930

17 ILO identifies eight conventions as "fundamental conventions", which address the fundamental labor rights and principles. It also identifies four conventions as governance or priority instruments to encourage the governments to ratify them. All the other 177 ILO conventions are considered as technical conventions.

Convention	Date
C027 - Marking of Weight (Packages Transported by Vessels) Convention, 1929 (No. 27)	24 Jun 1931
C032 - Protection against Accidents (Dockers) Convention (Revised), 1932 (No. 32)	30 Nov 1935
C045 - Underground Work (Women) Convention, 1935 (No. 45)	02 Dec 1936
C080 - Final Articles Revision Convention, 1946 (No. 80)	04 Aug 1947
C150 - Labour Administration Convention, 1978 (No. 150)	07 Mar 2002
C155 - Occupational Safety and Health Convention, 1981 (No. 155)	25 Jan 2007
C159 - Vocational Rehabilitation and Employment (Disabled Persons) Convention, 1983 (No. 159)	02 Feb 1988
C167 - Safety and Health in Construction Convention, 1988 (No. 167)	07 Mar 2002
C170 - Chemicals Convention, 1990 (No. 170)	11 Jan 1995
MLC, 2006 - Maritime Labour Convention, 2006 (MLC, 2006)	12 Nov 2015

ILO Conventions in force ratified by China

Freedom of Association and Collective Bargaining

The freedom of association is recognized by the Freedom of Association and Protection of the Right to Organise Convention (No. 87) and the Right to Organise and Collective Bargaining Convention (No. 98). Till 30 April 2017, 154 countries ratified the No.87 Convention,¹⁸ and 164 countries ratified the No. 98 Convention.¹⁹ China did not ratify either one.

According to the No.87 Convention, “workers and employers, without distinction whatsoever, shall have the right to establish and, subject only to the rules of the organisation concerned, to join organisations of their own choosing without previous authorisation.”²⁰ Chinese Constitutional Law, Labor Law, and Trade Union Law recognize the freedom of association. The Constitution states that Chinese citizens have the freedom of association.²¹ The Labor Law and the Trade Union Law state that laborers

18 Data available at http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11300:0::NO:11300:P11300_INSTRUMENT_ID:312232:NO (last visited April 30, 2017).

19 Data available at http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11300:0::NO:11300:P11300_INSTRUMENT_ID:312243:NO (last visited April 30, 2017).

20 No.87 Convention, art. 2.

21 Xian Fa [Constitution], art. 35.

shall have the right to participate in and organize trade unions in accordance with the law.²² However, the Trade Union Law requires that the establishment of trade unions have to be approved by the superior trade unions,²³ which makes all the trade unions branches of the All-China Federation of Trade Union (ACFTU). This clause does not meet the ILO standard of “without previous authorisation.” In practice, trade union leaders are usually appointed by the companies; unions are also funded by the companies. Hence trade unions in China can rarely support the laborers.

The right of collective bargaining is recognized by the No. 98 Convention. According to this convention, “measures appropriate to national conditions shall be taken, where necessary, to encourage and promote the full development and utilisation of machinery for voluntary negotiation between employers or employers’ organisations and workers’ organisations, with a view to the regulation of terms and conditions of employment by means of collective agreements.”²⁴ Chinese labor law uses the term “collective consultation” instead of “collective bargaining.” According to Labor Law, “a collective contract shall be concluded by the trade union on behalf of the staff and workers with the enterprise; in an enterprise where the trade union has not yet been set up, such contract shall be also concluded by the representatives elected by the staff and workers with the enterprise.”²⁵ However, because the trade unions lack independence and representativeness, the effects of collective consultation can hardly equal to the effects of collective bargaining.

Forced Labor

This issue is addressed by the Forced Labour Convention (No. 29) and the Abolition of Forced Labour Convention (No. 105). Till 30 April 2017, 178 countries ratified the No. 29 Convention²⁶, and 175 countries ratified the No. 105 Convention.²⁷ China did not ratify either one.

In the No. 29 Convention, “forced or compulsory labor” means “all work or service which is exacted from any person under the menace of any penalty and for which the

22 Laodong Fa [Labor Law], art. 7. Gonghui Fa [Trade Union Law], art. 3.

23 Gonghui Fa [Trade Union Law], art. 13.

24 No. 98 Convention, art. 4.

25 Laodong Fa [Labor Law], art. 33.

26 Data available at http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11300:0::NO:11300:P11300_INSTRUMENT_ID:312174:NO (last visited April 30, 2017).

27 Data available at http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11300:0::NO:11300:P11300_INSTRUMENT_ID:312250:NO (last visited April 30, 2017).

said person has not offered himself voluntarily.”²⁸ China’s Labor Law states that a laborer may notify at any time the employing unit of his decision to revoke the labor contract when the employing unit forces the laborer to work by resorting to violence, intimidation or illegal restriction of personal freedom.²⁹ The Labor Contract Law states that a laborer may terminate his employment contract forthwith without giving prior notice to the employing unit when the employing unit uses violence, threats or unlawful restriction of personal freedom to compel him to work.³⁰ Forced labor is also forbidden by the Criminal Law. For example, the Criminal Law states that if any employing unit forces employees to work by means of deprivation of personal freedom, persons directly responsible for the crime shall be sentenced to fixed-term imprisonment of not more than three years or criminal detention, and concurrently or independently be sentenced to a fine.³¹

Although forced labor is forbidden by laws above, China is criticized on this issue because of the policies of “reform through labor” (laodong gaizao) and “rehabilitation through labor” (laodong jiaoyang). According to the Regulations on Reform through Labor, prisons have the power to force prisoners to work. Though the Article 2 of the No. 29 Convention states that “the term forced or compulsory labour shall not include... (c) any work or service exacted from any person as a consequence of a conviction in a court of law, provided that the said work or service is carried out under the supervision and control of a public authority and that the said person is not hired to or placed at the disposal of private individuals, companies or associations,”³² most prisons have established their affiliated enterprises, and force the prisoners to work for the prison enterprises and prison factories and sell their products in the market, this common practice is actually a kind of forced labor according to the No. 29 Convention.³³

In 1957 the State Council issued the Decision on Rehabilitation Through Labour, stating that the Public Security Bureaus have the power to punish criminal suspects or law breakers through forced labor without a trial or a court judgment.³⁴ Because rehabilitation through labor was not a judicial punishment, but an arbitrary administrative decision, it

28 No. 29 Convention, art.2.

29 Laodong Fa [Labor Law], art. 32.

30 Laodong Hetong Fa [Labor Contract Law], art. 38.

31 Xing Fa [Criminal Law], art. 244.

32 Forced Labour Convention, 1930 (No. 29), art. 2.

33 Xiao Zhu, A Comparative Study on International Labor Standards of Abolition of Forced Labor and Chinese Relevant Legislation and Practices, *Journal of China Institute of Industrial Relations*, 2010, Vol. 24, No. 1: pp. 80-84.

34 The Decision on Indoctrination through Labor, art. 2.

faced fierce criticism. Finally, the system of rehabilitation through labor was abolished by the standing committee of NPC on 28 December 2013.³⁵

Anti-discrimination

Anti-discrimination is addressed in the Equal Remuneration Convention (No. 100) and the Discrimination (Employment and Occupation) Convention (No. 111). Till 30 April 2017, 173 countries ratified the No. 100 Convention,³⁶ and 174 countries ratified the No. 111 Convention.³⁷ China ratified them in 1990 and 2006 respectively.

The No. 111 Convention defines discrimination as “Any distinction, exclusion or preference made on the basis of race, colour, sex, religion, political opinion, national extraction or social origin, which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation.”³⁸ China’s Labor Law states that laborers shall not be discriminated against in employment, regardless of their ethnic community, race, sex, or religious belief.³⁹ At that time, Chinese Labor Law seemed only to forbid the discrimination based on ethnic community, race, sex, and religious belief. However, China just ratified the No.100 Convention then, so the Labor Law did meet the ILO standard which China promised to obey then. After China ratified the No. 111 Convention in 2006, China enacted the Employment Promotion Law in 2007, which prohibited the discrimination against women, minorities, persons with disabilities, people with contagious, and peasant-workers.⁴⁰ We can see that China has made great efforts to improve its labor standards according to the ILO standards.

Child Labor

Child labor issue is addressed by the Minimum Age Convention (No. 138) and the Worst Forms of Child Labour Convention (No. 182). Till 30 April 2017, 169 countries ratified

35 The Decision of NPC on the Abortion of the Laws on Rehabilitation Through Labour, available at http://www.npc.gov.cn/npc/xinwen/2013-12/30/content_1821974.htm (last visited April 30, 2017)

36 Data available at http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11300:0::NO:11300:P11300_INSTRUMENT_ID:312245:NO (last visited April 30, 2017).

37 Data available at http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11300:0::NO:11300:P11300_INSTRUMENT_ID:312256:NO (last visited April 30, 2017).

38 No. 111 Convention, art. 1.

39 Laodong Fa [Labor Law], art. 12.

40 Jiuye Cujin Fa [Employment Promotion Law], art. 28.

the No. 138 Convention,⁴¹ and 180 countries ratified the No. 182 Convention.⁴² China ratified them in 1994 and 2002 respectively.

The Law of the People's Republic of China on the Protection of Minors (1991) states that "no organization or individual may hire any minor under the age of sixteen, except as otherwise provided by the State." At the end of 1991, the State Council issued the Provisions on the Prohibition of Using Child Labor,⁴³ which included a series of specific and detailed regulations on child labor. On paper, China established a complete legal framework to ban child labor.

The Gap Between Chinese Law and ILO Standards

By reviewing the relations between Chinese labor laws and ILO fundamental standards, we can see that those conventions ratified by China have greater impacts on China's labor law. The differences between China's domestic laws and its ratified conventions are small. Especially in the field of anti-discrimination, there are some obvious impacts of the No. 100 Convention and No. 111 Convention on China's plan of legislation. Though there are still gaps between China's labor law and ILO standards in the fields of freedom of association, the right to collective bargaining, and forced labor, related concepts and principles in the ILO conventions are recognized by and reflected in China's labor law. The major gaps between China's labor law and ILO conventions exist in some specific systems or standards, while they share most principles and values. Indeed, these laws and principles are general, abstract and sometimes impractical,⁴⁴ but they are not useless. For the contemporary China in transition, every new principle or concept is important. Because there have been serious debates on legal thoughts and principles, when China's labor law uses the concepts and principles of ILO conventions, it shows that China accepts and recognizes these international principles, which will definitely shape its legal reform in the future.

41 Data available at http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11300:0::NO:11300:P11300_INSTRUMENT_ID:312283:NO (last visited April 30, 2017).

42 Data available at http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11300:0::NO:11300:P11300_INSTRUMENT_ID:312327:NO (last visited April 30, 2017).

43 Jinzhi Shiyong Tonggong Guiding [Provisions on the Prohibition of Using Child Labor], available at http://www.law-lib.com/law/law_view.asp?id=7559 (last visited April 30, 2017).

44 For example, Aaron Halegua argues that the problem of Chinese labor standards is not that they are low, but they are not fully enforced. See Aaron Halegua, *The Debate Over Raising Chinese Labor Standards Goes International*, *Harvard Law & Policy Review* (Online) (April 5, 2007).

The Influence of Non-state Actors

The Participation of Global Market and Transnational Civil Society

The reform of China's labor legal system has been highly concerned by the international community. For example, the legislative process of Labor Contract Law was widely participated by multi-national corporations and civil society organizations.

The enactment of the Labor Contract Law was a significant reform of China's labor legal system, so not only China considered it seriously, but also the stakeholders kept a watchful eye on it. In March 2006 the General Office of the Standing Committee of NPC issued a notification to solicit opinions on the draft of the Labor Contract Law. More than 190,000 opinions were submitted within the next 30 days, 65% of which came from the ordinary workers and grassroots organizations. Because most workers were organized or trained by NGOs to submit their opinions, and most NGOs in China were supported financially or technically by transnational civil society organizations, so these opinions could be regarded as the results of collaboration with local Chinese NGOs and transnational civil society. Generally, transnational civil society organizations were supporting this draft Labor Contract Law, which would provide better protections for workers.

At the same time, American Chamber of Commerce in Shanghai, the US-China Business Council, The European Union Chamber of Commerce in China and many other multinational corporations and business organizations submitted their comments. These three organizations represented a large number of companies' opinions. For example, the American Chamber of Commerce in Shanghai represents over 1,300 corporations, The U.S.-China Business Council represents 250 U.S. companies, and the European Union Chamber of Commerce in China represents more than 860 companies. Unlike the civil society organizations, they submitted comments to block the draft Labor Contract Law, which would raise labor protection standards in China. There were many reasons for their opposition. First, they argued that Chinese companies usually violated labor law without serious legal consequence, because Chinese authorities rarely enforced labor law. However, companies in U.S. or Europe could not ignore labor law as Chinese companies did, because they faced pressures from domestic and international labor or human rights NGOs.⁴⁵ Second, many terms of the draft Labor Contract Law "were too vague to understand or implement,"⁴⁶ which actually was a common problem of Chinese

45 Id.

46 Id.

laws. Third, they believed that China already had established high labor standards. The key problem in China's labor system was not the low labor standards, but the weak enforcement of these standards. They argued that if China raised its labor standards before it solved the problem of the enforcement, it might make the situation worse.⁴⁷ These business organizations also threatened that foreign corporations would withdraw from China if the Labor Contract Law was passed.⁴⁸

The revised draft of Labor Contract Law accepted some suggestions by the multi-national corporate organizations, especially their criticisms on the vagueness of some terms.⁴⁹ However, it still raised the labor standards in general, which reflected the NGOs' opinions. It is not safe to say that the lobbying of transnational civil society was the only factor that made this reform successful. Actually, the goal of the legislation of the Labor Contract Law was to improve the conditions of workers, and to reduce their discontents. This was the social context which made the opinions of transnational labor organizations and human rights organizations were accepted by Chinese legislator. Yet we shall not underestimate the effects of the transnational civil society. Their opinions were an important resource for China to launch this reform. Before the opinion submission, they had already made great efforts to advocate for labor law reform. Many human rights organizations even tried to boycott China in the international market to push China to improve its labor standards.⁵⁰ Below we will take Labour Action China (LAC) as an example to show how transnational civil society organizations can influence China's labor law.

LAC is a Hong Kong-based labor NGO, whose mission is to improve China's labor conditions. In the 1990s and early 2000s, LAC found that many workers of Hong Kong jewelry companies in Guangdong province suffered from silicosis, and were fired because of the disease. Back then China did not enact any law on occupational disease. There was no regulation about what occupational disease was, how to diagnose occupational disease, and how to compensate the victims of occupational disease.⁵¹ To help the victims and address this problem, LAC supported the victims to fight for their rights through

47 See Gallagher and Dong, *supra* note 15.

48 See Global Labor Strategies: *Behind the Great Wall of China*, available at http://laborstrategies.blogs.com/global_labor_strategies/files/behind_the_great_wall_of_china.pdf (last visited April 30, 2017).

49 See Halegua, *supra* note 43.

50 See Dana C. Nicholas: "China's Labor Enforcement Crisis: International Intervention and Corporate Social Responsibility", *The Scholar*, Vol. 11:155, pp156-194.

51 See China Labour Bulletin, *Who is to blame? An Analysis of Charity and Compensation for China's Pneumoconiosis Victims*, http://www.clb.org.hk/sites/default/files/archive/schi/File/other/No%2022%20silicosis%3%285%292012Nov_0.pdf, (last visited April. 30, 2017).

litigations and negotiations. LAC provided them with legal training, legal aid lawyers, and living subsidies for several years. LAC also organized campaigns in Hong Kong to support the victims, to criticize the involved companies, and to push the companies to negotiate with the victims.⁵² When some companies refused to pay the compensation to the victims, LAC organized three representatives of the victims to lobby and protest in Basel, Switzerland. They succeeded in making the involved companies be expelled by the Basel World, which was a top jewelry fair in the world. These campaigns and litigations helped China to notice the problems of labor law regarding the occupational disease, and to improve the laws and regulations. In 2001, China enacted the Law on Prevention and Control of Occupational Disease, and revised it in 2011. Currently, LAC is still working on pushing China's labor law reform through advocacy and public education. For instance, LAC submitted recommendations regarding special relief fund for occupational disease, and unification of the standards of civil compensation for occupational disease, to the General Office of the Standing Committee of NPC in 2013. It also submitted reports to the UN Human Rights Council during China's Universal Periodic Review session to attract international attention to China's labor conditions.

The Demonstration Effects of Informal Rules

One important phenomenon of legal globalization is the rise of informal international norms developed by non-state actors. Some international Corporate Social Responsibility (CSR) standards, especially the Global Compact, SA8000, and ISO26000 have impacts on China's labor law reform. Global Compact is a voluntary network launched by UN in 2000. Currently, it has over 12000 corporate participants and other stakeholders from over 145 countries. The Global Compact builds ten principles based on the international documents such as the Universal Declaration of Human Rights, and the ILO Declaration on Fundamental Principles and Rights at Work, etc. Among the ten principles, there are general human rights principles like "support and respect the protection of internationally proclaimed human rights," and principles on specific labor issues, such as the elimination of forced and compulsory labor, the abolition of child labor, and the elimination of discrimination.⁵³ Global Compact has established a secretariat in China, and has more than 300 Chinese corporate participants. ISO26000 is an international standard developed by the International Organization for Standardization (ISO) in 2010 to provide

52 China Labour Bulletin, *Deadly Dust: The Silicosis Epidemic among Guangdong Jewellery Workers and the Defects of China's Occupational Illnesses Prevention and Compensation System*, http://www.clb.org.hk/sites/default/files/archive/en/File/research_reports/Deadly_Dust_Dec2005.pdf, (last visited April. 30, 2017).

53 FIDH: *Corporate Accountability for Human Rights Abuses: A Guide for Victims and NGOs on Recourse Mechanisms*, 2010, pp499-500.

guidelines for CSR. It was the first global CSR standards that involve governments.⁵⁴ It addresses a wide range of issues, including human rights, and labor practices. SA8000 is an international standard developed by Social Accountability International (SAI) in 1997. It is the world's first auditable social certification standards for labor rights. It is developed based on the UN Declaration of Human Rights, conventions of the ILO, UN and national law, which makes it a leading CSR standards in the labor area.⁵⁵ Among these three standards, SA8000 is the specific labor standard and has wide application in China⁵⁶ so that we will examine the relations between SA8000 and China's labor law.

SA8000 addresses nine key issues, including child labor, forced or compulsory labor, health and safety, freedom of association and right to collective bargaining, discrimination, disciplinary practices, working hours, remuneration, and management systems. China's current labor law generally sets the same standards as SA8000 on the issues of child labor, health and safety, and working hours. On some issues, China's labor law even offers better protections to the workers than SA8000 does. For instance, SA8000 sets the minimum working age as 15 years old according to the ILO standards, but China's Labor Law sets the minimum working age as 16 years old. However, there are still many things China's labor law can learn from SA8000:

(1) The terms of SA8000 are more specific and practical. It provides creative and useful solutions to many practical problems in labor rights protection. For example, SA8000 requires that employers shall not "use labor-only contracting arrangements, consecutive short-term contracts and/or false apprenticeship or other schemes to avoid meeting its obligations to personnel under applicable laws and regulations,"⁵⁷ which greatly addresses a common problem among Chinese companies.

(2) Many terms of SA8000 address some issues which are not addressed by China's labor law. For example, China does not enact an law or useful regulation to prevent sexual abuses in workplace, while SA8000 requires that "the organisation shall not allow any behavior that is threatening, abusive, exploitative or sexually coercive, including gestures, language

54 Li Weiyang, Xiao Hongjun: *ISO26000 de Luoji: Shehui Zeren Guoji Biaozhun Shendu Jiedu*, Jingji Guanli Chubanshe, 2011, pp. 6.

55 See Li Xueping: *Qiyehui Zeren Guoji Falv Wenti Yanjiu*, Zhongguo Renmin Daxue Chubanshe, 2011, pp 83.

56 Lin, Li-Wen, Corporate Social Accountability standards in the global supply chain: Resistance, reconsideration and resolution in China, *Cardozo Journal of International and Comparative Law*, 2006, Vol. 15, No.2: pp.321-370.

57 SA8000 (2014), pp. 12. Available at http://sa-intl.org/_data/n_0001/resources/live/SA8000%20Standard%202014.pdf (last visited April 30, 2017).

and physical contact, in the workplace and in all residences and property provided by the organisation, whether it owns, leases or contracts the residences or property from a service provider,”⁵⁸ which fills in the legal gap.

(3) Many terms of SA8000 set higher standards, from which China’s labor law can learn to improve itself. For instance, China’s Labor Law only forbids discrimination based ethnic community, race, sex, and religious belief, and it only protect the equal rights of employment, work allocation, and remuneration, while SA8000 requires that “the organisation shall not engage in or support discrimination in hiring, remuneration, access to training, promotion, termination or retirement based on race, national or territorial or social origin, caste, birth, religion, disability, gender, sexual orientation, family responsibilities, marital status, union membership, political opinions, age or any other condition that could give rise to discrimination,”⁵⁹ which can definitely provide more comprehensive protections to wider range of people.

These informal norms can influence not only China’s labor law, but also the policies of the Chinese government and business associations. For example, because the launch of SA8000 greatly affected China’s foreign trade,⁶⁰ and many Chinese overseas investments faced challenges for its poor performance on CSR,⁶¹ the Chinese government issued a series of policies to promote CSR in China. The State-owned Assets Supervision and Administration Commission released the Guidelines to the State-owned Enterprises Directly under the Central Government on Fulfilling Corporate Social Responsibilities in 2008, the China Banking Association released the Guidelines on Corporate Social Responsibility of Chinese Banking Financial Institutions in 2009, the Ministry of Finance released the Compliance Guidelines for Enterprise Internal Controls No. 4: Corporate Social Responsibility in 2010, the State Administration of Industry and Commerce released the Guidelines for Direct-selling Enterprises on Fulfilling Corporate Social Responsibility in 2013, and the Guidelines for Online Trade Platform Operators on Fulfilling Corporate Social Responsibility in 2014. All of these guidelines state that the compliance of laws and regulations, and the protections of labor rights and interests is an important part of CSR. Besides, the China National Textile and Apparel Council developed a CSR management

58 Id, pp. 11.

59 Id, pp. 10.

60 See Hu Ming-juan, SA8000 de Yinru yu Woguo Qiye Shehui Zeren Biaozhun de Jianli, *Qiye Gaige yu Fazhan*, 2005, No. 6:pp171-175.

61 See Zhang Wan-hong, Cheng Qian, Human Rights Impacts of Overseas Investments by Chinese Corporates under the “Going Out” Strategy, in China Society of Human Rights Studies ed., *Annual Report on China’s Human Rights No. 5 (2015)*, Social Science Academic Press, 2015, pp305-321.

standard, namely CSC9000T, for Chinese textile and apparel industry. The CSC9000T is based on Chinese law and regulations, and conventions ratified by China, including ILO conventions.

Conclusions

Legal globalization is not a dream or a slogan, but a reality and a trend. China's labor law reform since the "reform and opening up" reflects the impacts of legal globalization on Chinese legal system. First, international norms provided resources to Chinese legislators to establish its labor legal system for a market economy. China introduced and transplanted many international or foreign legal institutions and norms into Chinese legal system. Even some norms of conventions were not transplanted, the principles or conceptions of the conventions were accepted by Chinese laws, which would guide and shape Chinese legal reform in the next step. This impact was not direct, but profound and lasting.

Second, non-state actors played important roles in global governance. Multi-national corporations and transnational civil society organizations influenced Chinese legal reform through lobbying, advocacy, public education, litigation, etc. Their opinions might not be accepted by Chinese legislators, but would help them think about and launch the legal reform.

Third, informal international norms shall not be underestimated. The informal norms or standards developed by business associations or NGOs not only protected labor rights and changed corporate behaviors, but also filled in some gaps of China's labor law. They could also inspire Chinese legislators to reform and improve China's labor laws and regulations. Moreover, they inspired and encouraged Chinese NGOs and business association to develop domestic standards for Chinese companies, which itself was a phenomenon of legal globalization.

Chinese Contributions to Global Normative Pluralism?

Hanne Petersen

Introduction

This paper was first presented at a conference on *Asian Perspectives on Legal Globalization* at the 13th Asian Law Institute Conference (based in Singapore) held in Beijing in May 2016. Since 2009 I have increasingly dealt with issues concerning China, and since 2012 I have come to link issues dealing with China and Greenland, where I lived for four years and worked for altogether another decade from 1995-2006. Not least due to these links, I have during the last few years become increasingly interested in the *essay genre*, especially because it seems to allow for bringing issues and topics together in a less coherent way than what is normally expected from academic writing. Coming back from a longer study trip to China in 2015 I bought an e-book version of Phillip Lopate's "To Show and To Tell. The Craft of Literary Nonfiction." On a kindle version one can see other people's highlights of the text (at that point I had not found out how to make my own). One of the interesting highlights – in my perspective – is this "*Nonfiction writing thrives on daring, darting, subjective flights of thought. You must get in the habit of inviting, not censoring, the most far-fetched, mischievous notions, because even if they prove cockeyed, they may point to an element of truth that would otherwise be inaccessible*".¹ – This essay thus brings together what can be seen as incoherent topics, but hopefully does so in a still interesting and meaningful way. It aims to question and reflect on issues of size and scale as well as historical and recent trends and experiences in an increasingly interconnected world, where self-understanding, awareness, positions and power are in processes of considerable change. In such a world tomorrow's globalized normative order can probably not be expected to resemble that of yesterday, even if I believe that we may still expect it to be characterized by plurality – but perhaps of a somewhat different kind.

I am not sure that I have been sufficiently daring – or that I have pointed to elements of otherwise inaccessible truth. But I hope this introduction may explain, why there are

1 Phillip Lopate, 2013, *To Show and To Tell. The Craft of Literary Nonfiction*, Free Press, N.Y., Ch.2
See also my essay "*Even if a Sparrow is small, it still has all Organs. Chinese and Greenlandic gendered perspectives on the global arctic*" in *Nordic Journal on Law and Society*, Vol. 1, no. 01-02 (2017) pp. 65-90.

more questions than answers in this ‘essay’, and why it may hold ‘superfluous’ text and quotes and may seem to lack a ‘clear aim’. Times are not always easy to understand.²

A world of asymmetry, disparity and history.

At this moment in 2017 the UN has 193 member states. In the dominant (Western) legal theories and in the UN treaty these states are considered sovereign and equal (to some extent). However, if we look closer at the figures, we will see that about 50 of these states have populations below 1.5 million – a minor Chinese city – and 106 of the states have populations below 10 million. Only 11 of the UN member states have populations of more than 100 million (China, India, United States of America, Indonesia, Brazil, Nigeria, Bangladesh, Russian Federation, Japan, Mexico, Philippines).³

Size and scale matter in a globalized world. These eleven biggest countries of the world cover all continents apart from Europe. However, “Eurasia”, a contested term, sometimes described as the combined continental landmass of Europe and Asia comprises about 70% of the world’s population.⁴ Of the world’s about 7 billion people more than 50 % live in the Eastern and Southern parts of Asia.⁵ These big countries, which have experienced considerable economic growth over the last decades of course can and will have a future impact on normative globalization.

The present global legal landscape is undergoing reconstitution. The EU, which has expanded from originally six countries to the present 28 (still including the UK, which has not yet left at the time of writing) has a population of more than half a billion people – of which 13 have populations of less than 10 million people. The European Union and

2 I want to thank the ‘blind’ reviewers of this essay for their comments on the earlier version of this presentation. They both found interesting points, ideas and reflections, but they did not find the text coherent and found it lacking in a clear aim and in depth analysis.

I also want to thank Lea Danyan Zheng, a Danish-Chinese law student, who carried out research for the preparation of this article, as well as the S.C.Van Foundation, who paid her salary in 2016 at a time when budget cuts at the University of Copenhagen meant that all appointments, which were not externally financed, were frozen. This version was finalized in March 2017.

3 See <http://esa.un.org/unpd/wpp/Download/Standard/Population/> (Last visited 09.03.2016)

4 See <https://en.wikipedia.org/wiki/Eurasia> (last visited March 7, 2016); see also See Alfred W. McCoy, *The Geopolitics of American Global Decline: Washington Versus China in the Twenty-First Century*, June 7, 2015 http://www.tomdispatch.com/post/176007/tomgram%3A_alfred_mccoy%2C_washington%27s_great_game_and_why_it%27s_failing_/#more (last visited March 7, 2016).

5 See <http://esa.un.org/unpd/wpp/Download/Standard/Population/> (Last visited 09.03.2016).

several of its member states are in considerable trouble, economically, politically and in terms of internal cohesion.

China is the one of the world's biggest countries and one of the oldest civilizations of the world. It is a country with a recent record of high economic growth, and a continued centralized political system – the so-called “socialist market economy”. In a world of asymmetry and disparity in terms of populations, economic growth and history, it is to be expected that a country like China is likely to have a considerable impact in the future on normative pluralism in a global legal landscape. The global geopolitical – and thus probably also in due time – the normative power is in the process of shifting.⁶ What this impact will be is however in no way fully clear.

Big countries may lead normative globalization by way of size and power – be it military, political, economic or cultural in a very broad sense. Small – or very small – countries and communities may probably (only) lead by example and in terms of different forms of attractive models. These may be models, which benefit bigger parts of the small populations in terms of politics and economy, sustainable living conditions, welfare, educational and health models, high trust and low corruption, modernized intergenerational and gender relations, which make these models workable. The small Nordic states have managed to deliver such examples for the last half century. Whether this will continue remains to be seen. Other models offering ‘protection of wealth’, tax heavens, and possibilities of luxury consumption of different kinds may perhaps be more attractive to the wealthy elites of the world.⁷

Big ideas and waves of globalizations

The American environmental historian, John McNeill has discussed the role of what he calls ‘big ideas’ of the 20th century, which he considers to be *nationalism*, *communism* and the *growth fetish*.⁸ Bearing in mind that Max Weber wrote his small and seminal book on

6 See McCoy, above; see also Uffe Østergaard, “Kina vinder” [China wins], in *Weekendavisen* March 10, 2017.

7 See Rebecca Adler-Nissen & Ulrik Pram Gad (red.), 2013, *European Integration and Postcolonial Sovereignty Games. The EU Overseas Countries and Territories*. See my review “Nye politiske relationer i Europa og verdenssamfundet” [New political relations in Europe and World Society] in *Politik*, No.4, Vol.16, 2013, pp62-64.

8 This is discussed briefly in my article “Reconstituting Orders after Neo-liberalism? The ‘Growth Fetish’, Gender and Environment in Sino-European Interchanges” in a special issue ‘Gender Dynamics, Chinese-Nordic Perspectives’ of the journal *Women, Gender & Research* No 1, 2015, pp 134-143. (The whole issue will be translated into Chinese)

The Protestant Ethic and the Spirit of Capitalism in German in 1904, one might perhaps add *capitalism* as a big idea of this century as well.

In a book in Danish on *Globalizations, Law and Legal Philosophy* from 2002, I asked in the introduction whether it would be possible to think that a capitalist spirit in 2004 would be associated with a (Chinese and Japanese founded) Buddhist ethics rather than a Protestant ethics, given that the dynamic economic centers of the world had moved east.⁹

It is beyond doubt that the spirit of capitalism has influenced Western legal culture and thus waves and forms of globalization considerably. Globalization is not a new phenomenon, and Swedish sociologist, Göran Therborn in 2000 suggested a definition of globalization as referring to “*tendencies to a world-wide reach, impact or connectedness of social phenomena or to a world-encompassing awareness among social actors.*”¹⁰ In this article, he described several historical waves of globalizations and contemporary forms of globalization, and further described what he called five discourses of globalization:

- a discourse on competitive/market economy,
- a discourse on social criticism,
- a discourse on the (im)potence of states,
- a discourse on culture
- a discourse on planetary ecology.¹¹

I still find both the definition and the description of the discourses convincing, even if the enthusiasm about globalizations has since waned considerably and may be expected to continue to do so in the near future. However, in the ages of climate change and digital communications understandings of and actual interconnectedness is perhaps not disappearing easily.

It is probably not an exaggeration to claim that the discourse on globalization and economic competition has been the most widespread in the years since the late 1990s, when the flood of writings on globalization began to emerge. Economic globalization

9 Hanne Petersen (ed) *Globaliseringer, ret og retsfilosofi*. Jurist- og Økonomforbundets Forlag, 2002, p.11.

10 Göran Therborn, Globalizations: dimensions, Historical Waves, Regional Effects, Normative Governance. *International Sociology*, Vol 15, No.2, June 2000, p.154

11 I discuss these discourses in my article ‘Globale udfordringer til vestlig retsfilosofi og retstænkning’ [Global Challenges to Western Legal Philosophy and Legal Thinking] in Hanne Petersen (ed) *Globaliseringer, ret og retsfilosofi*. Jurist- og Økonomforbundets Forlag, 2002, pp.138-154.

has been strongly linked to the practical and political importance of neoliberal economic theories. These theories gained ground and practical importance after the elections of Margaret Thatcher (1925-2013) to Prime Minister of the UK from 1979-1990, of Ronald Reagan (1911-2004) as President of the US from 1981-1989 and the taking over of power in PRC by Deng Xiaoping (1904-1997) from 1978 until his 'retirement' in 1992. However, these economic theories by then had already been practiced to a considerable degree not least in Latin America.

The authors of *Neoliberalism: A Very Short Introduction* quote political economist David Harvey, who has spoken about '*neoliberalism with Chinese characteristics*' – something which “represented a genuine search for an alternative model – state-socialism-plus-market, to be evaluated according to the neoliberal criteria of economic efficiency, productivity, and competitiveness.”¹²

It may be a question of whether or to what extent the other globalization discourses, on social criticism, culture, (im)potence of (many and perhaps small?) states and on planetary ecology will become more dominant in the 21st century and become integrated parts of the Asian influence on discourses on globalization – including possible legal and normative globalizations.

What may we expect from for instance a Chinese contribution to and influence on normative and legal globalizations? Will it be a model of “global normative/moral/legal globalization” with “Chinese characteristics”? Will it be combined with “state-socialism-plus-market” and perhaps with emerging ‘internet-individualization’¹³ of one (soon sometimes two) child-generations? – Are we going to see a strong state with an ambition to mold a Chinese Dream or perhaps less likely a Western type version of ‘rule of law’ in an era very different from the one that gave rise to the term and the ideal?

China – a nation in motion

In his *Speculations on Law and Society in Modern China*,¹⁴ American law professor, Robert Berring describes China as “a nation in motion” with a “legal system [which] reflects that

12 Manfred B. Steger and Ravi K Roy, *Neoliberalism. A Very Short Introduction*. Oxford University Press, 2010, Chapter 4 Neoliberalism and Asian Development.

13 A term I have just coined, and which others may also have created.

14 Robert C. Berring, *Speculations on Law and Society in Modern China. An Essay*. In M. Tomasek & G. Mühlemann (eds). *Interpretation of Law in China – Roots and Perspectives*. Charles University In Prague. Karolinum Press, 2011, p.21-41.

constant change”, and where over the past twenty years “Chinese law has undergone a truly astounding metamorphosis”. It is also a nation and an empire, where the “Chinese culture was so developed and so strong that those who could vanquish Chinese armies became trapped in Chinese culture.”¹⁵

In his description of what he calls the *Mao Era Legal Governance* he describes what he calls the *Maoist Values and the Peasant Experience*. These are values and experiences of specific importance in the 20th century, but they probably have not faded completely in this era of ‘Asian Globalization.’ He describes this as a program carried out by the Chinese government through the Communist Party of China consisting of mass education, mass involvement and industrial modernization:

*The program, while never as simple as it seemed, was built on a cohesive set of nationalistic and ideological values. I will identify this core of values as Maoist. These Maoist values stress the uniqueness of China, the centrality of the peasant and peasant sensibility to government, the importance of communitarian and non-structural values to the process of government, the importance of personal status, and the government of men through virtue as opposed to any definable norms of behavior.*¹⁶

Notice the importance of values of communitarianism, personal status and virtue. Could they be a Chinese contribution to global normativities in the 21st century? Market values of efficiency and productiveness as well as competitiveness have for sure become more important, but they do not seem to have taken over in Chinese culture. Confucian hierarchical thinking has returned and influences present day China.

*Like Confucius, Mao believed in a government, not laws, with Mao substituting the central tenet of the mass line for Confucian li. Like the traditional li of Confucius, the mass line could not be written out for future reference or even for current guidance, for to write it down would be to limit it. The mass line was fluid and not rigid; it could only be embodied in the charismatic and virtuous great leader, who crystallized its essence.*¹⁷

15 Ibid, p.24

16 Ibid. p.30

17 Ibid. p.34

This quote from Berring and the importance of the fluid mass line brings to my mind the importance and repeated recurrence of the concept of liquidity in the writing of late sociologist Zygmunt Bauman, who wrote on *Liquid Times*, *Liquid Modernity*, *Liquid Life*, *Liquid Love*, *Liquid Fear* and *Liquid Surveillance*. All these writings are not surprisingly now available on Google Books.¹⁸

As the crystallization of the will of the people, the charismatic leader of the government must be unfettered. / At this level there are great similarities between Maoist and Confucian legal thought. Just as Confucius believed in the li, an unwritten set of correct actions that could be applied to any situation, the thoughts of Chairman Mao became a deep set of guidelines that could not be written, that could only be experienced...

Both Confucius and Mao admitted that there may be the need to have judges for disputes, but both men placed greater emphasis on avoiding the dispute altogether. The Confucian doctrine of a polestar leader, who inspires through virtue is found in Mao, who leads through his very existence in a way that cannot be written or rationalized.¹⁹

Western legal culture has been very concerned about the importance of rights and courts especially since the end of World War II and the establishment of the UN and the EU. This has had a global impact. It remains to be seen whether this will continue under future global conditions, where China will have a greater say, or whether negotiations may have a more important role to play.

It is of course well-known that considerable changes have taken place in China after Mao's death in 1976. There are also several writers, who underline the combined but also conflicting interest in social stability and economic growth driven by both state policy and use of the law to secure these important goals – at the cost of other concerns such as

18 See the references to these titles on Google Scholar. https://scholar.google.dk/scholar?q=Zygmunt+bauman+liquid&hl=da&as_sdt=0&as_vis=1&oi=scholar&sa=X&ved=0ahUKEw-jq-_yx6eLSAhXFxCwKHdhKCJIQgQMIFzAA

19 Ibid. p.35

sometimes labour protection.²⁰ It has also been noted that the present leader Xi Jinping is the strongest leader since the Mao-era – perhaps returning to the idea of the ‘polestar leader’.

Berring’s writing indicates that the ‘return’ of and emphasis on Confucian ideas, which has sometimes been understood to take place in order to replace Maoist and communist ideas, is perhaps less drastic than sometimes alleged, and is more of a gradual shift of emphasis. One could perhaps speak of a shift from a ‘Maoist-Confucian’ thinking to a ‘Market-Confucian’ thinking?

A world-encompassing awareness?

At the first international meeting ever to be held in Beijing by the originally German *Internationaler Verein für Rechtsphilosophie* (IVR – in English International Association for Legal Philosophy) in 2009, the title of the seminar was *Global Harmony and Rule of Law*. The move – and perhaps shift and connectedness – in global legal thinking may be reflected by the continuation of a German name for an international association combined with a pluri-lingual conference and a polyvalent title, referring both to dominant Chinese values of harmony and Western values of rule of law.

One of the key note speakers Chinese-American law professor Tu Weiming, who is considered to be a Neo-Confucianist, gave a speech entitled *Cultural Diversity, Intercivilizational Dialogue, and Harmony – A Confucian Perspective*. This speech started as follows:

Cultural diversity is recognized as an undeniable fact of life throughout the world. It is celebrated as an essential aspect of human flourishing. It is also feared as a threat to global citizenship. Ecological consciousness is a defining characteristic of the human condition. It is an awareness that the viability of the human species is in danger; thus, rich or poor, we are fated to share the same lifeboat. Ecological consciousness also divides the international community in terms of figuring out an equitable way to deal with the danger to the human species. As a result, the

20 See the articles by Ulla Liukkunen (2014), Transnational Labour Law and Fundamental Labour Rights: Making Chinese Workers Matter? In Ulla Liukkunen & Chen Yifeng (eds) *China and ILO. Fundamental Principles and Rights at Work*. Wolters Kluwer, The Netherlands, pp.163-180, and Teemu Ruskola (2014), Afterword: Globalization, Rights, and Work in the Chinese Transformation. In Ulla Liukkunen & Chen Yifeng (eds) *China and ILO. Fundamental Principles and Rights at Work*. Wolters Kluwer, The Netherlands, pp.197-204.

*developed and developing nations are locked in seemingly endless bargaining for distributive justice to reverse the trend of massive destruction... Intercultural dialogue is not a solution to the closed particularism or the ecological crisis, but it is a first step toward human survival and flourishing.*²¹

Here it seems as if Göran Therborn's other discourses of globalization – particularly on planetary ecology but also those on social criticism and culture are addressed within a context of concern about normative globalization. We can also recognize the emergence of a “world encompassing awareness” of an ecological crisis as a common threat. We know that both the former global superpower, The United States of America, and the emerging global power, China, played an important role at the UN Conference of the Parties, COP 21 (consisting of the state parties, who in 1992 in Rio de Janeiro, Brazil, signed the Framework Convention on Climate Change) which took place in Paris in December 2015, and which led to the relieving result of a Paris Agreement, where the beginning of the Preamble reads:

*Recognizing that climate change represents an urgent and potentially irreversible threat to human societies and the planet and thus requires the widest possible cooperation by all countries, and their participation in an effective and appropriate international response, with a view to accelerating the reduction of global greenhouse gas emission...*²²

Both international conventions and national regulations may be easier to create than to implement – although the process leading to the Paris Agreement was indeed long and difficult in itself. Paper is patient. Hypocrisy is found in individuals as well as in communities and states, and it has been claimed to be the homage, which vice pays to virtue.²³

The 2017 change of the US administration clearly indicates a direction, which distances itself to the COP 21 agreement. This leaves moral and practical ground for China and other global actors to take climate change seriously. Whether this will actually happen remains to be seen. No doubt, there will be great difficulties amongst the big players

21 Tu Weiming, Cultural Diversity, Intercivilizational Dialogue, and Harmony – A Confucian Perspective. In *Global Harmony and Rule of Law. IVR 24th World Congress*, September 2009, Papers Plenary Sessions p.28-56.

22 See UNFCCC/CP/2015/L.9/Rev.1 Adoption of the Paris Agreement, Proposal by the President, p.1-2, <http://unfccc.int/resource/docs/2015/cop21/eng/l09r01.pdf> (last visited 02.01.2016).

23 This is an indirect quote attributed to François de La Rochefoucauld (1613-1680).

of the world to transform an emerging but also much contested popular awareness of climate change and ecological crisis into practical action.

*Acknowledging that climate change is a common concern of humankind, Parties should, when taking action to address climate change, respect, promote and consider their respective obligations on human rights, the right to health, the rights of indigenous peoples, local communities, migrants, children, persons with disabilities and people in vulnerable situations and the right to development, as well as gender equality, empowerment of women, and intergenerational equity.*²⁴

The big ideas of the 20th century still influence the big players in world society in the 21st century. Normative regionalizations and globalizations exist alongside legal nationalism, something that is perhaps seen especially clearly – but not only – in the case of EU. Asia and China with its multitude and magnitude of populations also have a strong focus on national interests. Nonetheless they may be expected to play an extremely important role in the future processes of normative globalization. They will not necessarily take the form of a general continuation of transplanted western regulations, although use of certain model regulations may certainly happen. They may take the form of updated versions of Confucianist thinking and principles, but most likely supplemented by other normative forms and regulations. Confucianism operates with very hierarchical relationships, including gender and generational hierarchies. It seems to this author that these principles – as in the case of the revitalization of other gender and generational hierarchies for instance in (often monotheistic) religious orders and values – may not necessarily fit well in the 21st century.

Davids and Goliaths in the global arenas - Fear of small numbers?

Big countries mostly consist of a number of culturally and socially diverse populations. This was the case for the Soviet Union, which has again metamorphosed into Russia, as well as it is the case for the US, with its historical challenge stemming from subjected American Indians and Africans and presently increasing Latino population. China describes itself as having an absolute majority population of Han Chinese (91,6% of the population), but it officially recognizes 56 ethnic groups which all together make up

24 UNFCCC/CP/2015/L.9/Rev.1 Adoption of the Paris Agreement, Proposal by the President, p.1-2.

a population of well above 100 million people, several of which may have populations bigger than many of the smallest UN states.²⁵

The Indian-American professor of social sciences, Arjun Appadurai, in a small book entitled *Fear of Small Numbers* in a chapter with the same name writes that

*“There is a basic puzzle surrounding rage about minorities in a globalizing world. The puzzle is about why the relatively small numbers that give the word minority its most simple meaning and usually imply political and military weakness do not prevent minorities from being objects of fear and of rage. Why kill, torture, or ghettoize the weak.”*²⁶

Appadurai considers the possibilities of majorities feeling threatened, as majorities and minorities may in some situations be seen as being in danger of trading places.

The status of a ‘majority’ is relative. Within the (legal) landscape of states, the majorities are those, who make up the greater part of the population. However, given that most states have comparably minor populations, the parts of the state populations, which have for a perhaps considerable period considered themselves ‘majorities’, may in a global context come to see themselves as threatened minorities.

The development in my own small country Denmark (or the other Nordic countries) could be an example of minor states of below 10 million inhabitants. In my view there is no doubt that several of the ‘former majorities’ are feeling threatened by minorities – especially of Muslim migrants and refugees – who in a global context belong to very large communities. This is giving rise to nationalist policies as well as politics of fear.

However, this is not only a fear related to nation states but also to other communities. I have spent a decade dealing with the legal culture and system of the former Danish colony, Greenland, the world’s biggest ‘island’ with a tiny population of about 55.000 people, the majority of who are of indigenous and mixed origin.

This population has achieved increasing self-determination starting with Home Rule in 1979 and expanded into Self-Rule in 2009.

25 See http://www.indexmundi.com/china/demographics_profile.html (Last visited: March 7, 2016).

26 Arjun Appadurai, *Fear of Small Numbers. An Essay on the Geography of Anger*. Duke University Press, Durham and London, 2006, p.49.

In the Danish law on Self Rule it is stated that the correct name in foreign policy relations for the entity consisting of Denmark, self-ruled Greenland and the home-ruled Faroe Islands is *The Kingdom of Denmark*. The Danish population in Denmark proper makes up about 95% of the population of the Kingdom of Denmark – but Denmark covers only a tiny part of the territory of the Kingdom. The two other entities are both culturally and politically diverse. Both of them have self-determination, and both have stayed out or later opted out of membership of the European Union. Greenland is part of the Arctic, and China has over the last decade shown increasing interest in both the Arctic and Greenland for geopolitical and resource reasons.

For Denmark an acceptance of cultural and political diversity within the Kingdom has increasingly become a must if the majority wants to keep this Kingdom together, which it does, also for geopolitical and geostrategic reasons. One could perhaps claim that Denmark has become more dependent on Greenland because of the processes of globalization.

During the process of negotiations for Self-Rule in the beginning of the 21st century, an indigenous Arctic myth about the orphan Kaassassuk was invoked on several occasions, amongst others in the symbolic fox-like logo of the Greenlandic commission established to prepare the transition to Self-Rule. The myth exists in several versions and especially with differently interpreted endings. The following is my condensed versions of one of the myths with a more violent ending.

Kaassassuk is an orphan, who moves from family to family because nobody can cope with him. He is sick; he cannot keep food in his stomach and can't control his urine and faeces. He doesn't grow. Finally his maternal grandmother takes care of him. The paternal grandmother rejects him. He is harassed by children and grown-ups, who lift him into the snow hut in his nostrils. He is given food so difficult to chew that he can hardly eat. He is then told to contact a super-natural force in the inland, who is called The Possessor of Strength, or the Master of Power, sometimes presented as a mixture of a huge fox like creature with a human face. After a couple of meetings, the boy has gained sufficient strength to carry out great deeds. This newly gained strength must not be revealed to others immediately. During the night, when nobody sees it the boy removes a big log of driftwood or an umiak [a big boat for several women - hp]. Later three polar bears turn up. Kaassassuk asks his grandmother to borrow him her kamiks [traditional Arctic Inuit footwear - hp], because he does not have any himself. He runs off, mocked by everybody, kills the bears, throws out the baby polar bear to the rest of the settlement, following

the customary rules of sharing food, and brings back the rest of the meat to his grandmother to be used for food and fur for clothing. From now on ridicule changes to fear. His enormous strength makes his fellows in the settlement follow his smallest wish. Soon the humiliated orphan turns into a brutal avenger. He starts hugging and then choking the small girls, who bring him water, and continues humiliating and later killing former persecutors and tormentors.²⁷

In my abbreviation of this version Kassassuk turns into a monster. But the myth can clearly be understood as a cautionary tale warning listeners and readers to take care of the weak, the small and the vulnerable, as they may otherwise ally with super-natural forces and turn into tyrants and against their former oppressors. The myth can also be interpreted as a kind of David and Goliath story, where the small David defeats the grand Goliath. With this interpretation the sympathy of the audience will in a Western context mostly go to David – the small and overpowered figure.

In June 2012 Chinese president Hu Jintao paid a state visit to Denmark for the first time during the existence of the PRC. China's Minister for Land and Resources Xu Shaoshi had already in April 2012 visited Greenland, due to Chinese interest in investment in mineral resources of different kinds in Greenland.²⁸ Chinese interest in the state visit to Denmark was partly related to Greenland, while the Danish interest was strongly related to general Chinese investments and business agreements. After the state visit it became clear that it had been extremely important for the Chinese that no demonstrations against the Chinese leadership would take place during the visit and especially during the motorcade of the president through the city of Copenhagen. This led to Danish policemen removing Tibetan flags from a few demonstrators, and to police cars covering a small demonstration from the view of the president – and probably from Chinese and international television viewers. This is most likely in practice a limitation of freedom of association and expression, which has given rise to the establishment of what has been called the “Tibet Commission”. During the spring of 2017 the Commission has been investigating, where the commands for these police actions emerged. At the time of writing, this has not been clarified. It is however, clear that the Chinese embassy held several meetings with a number of institutions including the Ministry of Foreign Affairs and its administration of state visits, the Intelligence Service and the office of the Royal Court in charge of state visits. During several meetings the need for a ‘dignified’ visit was expressed by Chinese

27 I have reprinted two versions of this myth with different endings in my book *Retspluralisme i praksis – grønlandske inspirationer*. [Legal Pluralism in practice – Greenlandic inspiration]. Ilisimatusarfik & Jurist- og Økonomiforbundets Forlag, Copenhagen 2006.

28 See my essays mentioned in note 1.

diplomatic bureaucracy. At these meetings, it was often repeated that it was important to avoid that the Chinese president would lose face during his visit. However, as a former Danish ambassador to Beijing mentioned during his testimony to the commission this was probably more about “world order” and “prestige of big powers”.²⁹ This visit and the circumstances around it – which are probably not foreign to other (small or weak) states in the world can (also) be seen as an expression of Chinese normative power, but probably also as an expression of a Chinese “fear of small numbers” at home.

Chinese perceptions of normative pluralism and relations between majorities and minorities

Yu Hua in his essay on “Disparity” writes about a Chinese saying, which goes “*The weak fear the strong... the strong fear the violent, and the violent fear the reckless.*”³⁰

This could be in line with the (pre-Christian) versions of the Arctic myth of Kaassassuk in Greenland.

The perception of the ‘Davids’ of the world as having some kind of superior moral status and strength may be probably strongly related to world views influenced by monotheistic religions. These world views are based on hierarchical thinking as is also the case with Chinese thinking especially its Confucian origins. However, Chinese hierarchies seem to be more diverse than Western, but perhaps also more oriented towards an absolute superiority of the higher status in the hierarchical relation. Confucian understanding and history has influenced China’s understanding of both foreigners and minorities as being at the margins of the middle or central kingdom – a notion which is well-known to most communities, who consider themselves the center of the or their world. The view of the Confucian approach towards minorities is that all people should live in unified harmony and peaceful coexistence – that is a form and process of peaceful assimilation.³¹

The superiority of the (Han-Chinese) majority against minorities in China and towards communities and powers outside China is part of a Confucian self-perception, which has

29 Sebastian Abrahamsen, Tibetkommissionen dag 9: Tidligere ambassadør: PET overfortolkede kineseres ønske om ikke at tabe ansigt, *Information* (daily news paper) December 17, 2016.

30 Yu Hua, *China in Ten Words*, Anchor Books, New York, 2012, p.143.

31 See Baogang He, Confucianism versus Liberalism over Minority Rights: a Critical Response to Will Kymlicka. In C. Mackerras (ed): *Ethnic minorities in modern China. Critical concepts in Asian Studies*. Vol. 1, Routledge, 2011, pp.29-47.

seemingly diminished during the period of globalization.³² What will the implications of such self-perceptions be in a world, where normative globalization will no longer primarily arise from and be influenced by former powers, but also from emerging major powers, most of which are situated in Asia?

If the Chinese saying about relations of fear has any relevance in this context, one might expect that the Chinese may *not* have strong reasons to fear the small and weak states of the world – of which there are many, as we have seen. China will be able to out-perform most states in the world in terms of economy, market size, population, and trade relations – all of which have important legal implications. It will also be able to have a considerable economic and thus also cultural and political impact on many of these small communities and states, who will have neither (wo)manpower, nor economic power and skills to run and develop the infrastructures and other public and private needs of importance in the present era. But it may have difficulties dealing with the small and the reckless.

The establishment of the Asian Infrastructure Investment Bank is probably a recent and an important example of an Asian initiative and perspective, which will have an impact on normative globalization. The AIIB, which was finally established on December 25, 2015, began its operation in January 2016. One of the first things the newly elected director, Jin Liqun undertook was a visit to Finland and Denmark³³, which he had also visited on an earlier occasion when he worked for the primarily Japanese run Asian Development Bank. Both countries are small, and are among the 13 EU countries, which belong to the founding members of the new bank.

The *modus operandi* of the bank will be ‘lean, clean and green’. According to a speech given on March 4, 2016 by Jin Liqun at his visit at the Copenhagen Business School, this was why he had chosen to visit these small Nordic countries, which have a good record in this respect, and where he had already established (personal) contacts. This is perhaps also an example of big powers seeking also small allies with reasonable reputations in world society. According to Jin Liqun China wants to win trust and confidence of the other shareholders of the bank, and he said that the bank wants to ‘contribute to connectivity in the vast Eurasian land’. One of the commentators noticed that the bank might be a

32 William Jankowiak, *Ethnicity and Chinese Identity: Ethnographic Insight and Political Positioning*. In C. Mackerras (ed): *Ethnic minorities in modern China. Critical concepts in Asian Studies*. Vol. 1, Routledge, 2011, pp.127-145.

33 Special lecture by Jin Liqun, President of the Asian Infrastructure Investment Bank: “Redrawing the Global Financial Map” held at Copenhagen Business School in cooperation with the University of Copenhagen, March 2, 2016 (author’s notes).

platform, where China can demonstrate its global responsibility in a political context, something which is not simple, and where China does not necessarily have close allies.³⁴

Final reflections

As an emerging strong actor in world society influenced by amongst others normative globalization, China must be expected to become an active part of a legal or normative globalization itself. This can be expected to be felt most strongly by the small and weak members of world society – be they states, minorities, businesses, or other belief communities of different kinds. Money talks, and Chinese money will also talk to the recipients of loans and infrastructure projects, whether they will be lean or green, soft or hard. A formal policy of political and military non-intervention and respect of formal sovereignty does not exclude, that countries and communities can be strongly influenced by economic interventions and investments or by non-investments for that sake.

However, what might be the implications of the saying of ‘the strong fearing the violent and reckless’ in a globalized world society. Can the violent and reckless be expected to be ‘tamed’ by different kinds of norms, whether they are of the legal ‘country-and-western-type,’³⁵ or of the economic either neo-liberalist or ‘socialist market’ type where the role of a centralized state is stronger. What will be the role in the future of religious and/or philosophical norms, which may provide individuals and communities of ‘believers’ or supporters with ethical guidelines and existential meaning?

The last decades have demonstrated that the gentle and the violent as well as the reckless of the world may follow other norms besides dominant moralities or legislative norms, which they may not always venerate to the same extent as do the makers of these regulations. China itself demonstrates ambivalence against neo-liberalist policies, norms and values in spite of a professed support of a ‘socialist market economy’. That ambivalence must be expected to spill over on a more Asian and Chinese influenced normative globalization. The present fears in several parts of the world could seem to lead to both increased surveillance of ‘majority communities’ of different scales in many parts of the world, as well as to de facto ‘states of exception’ and ‘martial law’ also influencing everyday life of ‘majority populations’. The situation in France after the terrorist attacks in Paris on November 13, 2015 may serve as an example of terrorism leading to a

34 Comment by prof. Ari Kokko, Director of Asia Research Center, CBS on March 2, 2016.

35 A term used by William Twining in his article ‘Surface Law’ in H.Petersen, A.L.Kjær, H. Krunke and M.R.Madsen (eds), *Paradoxes of European Legal Integration*, Ashgate 2008, pp.157-184.

state of exception, which has at the time of writing (March 2017) not yet been lifted. Prominent individuals around the world have had to leave or have left their countries of origin because of resistance to such developments. We are living under conditions of asymmetrical conflicts, which do not necessarily take place between states, but within states and across regions, and which for a European may remind more of the situation before the end of the Thirty Years War from 1618-1648 ending with the establishment of the Peace of Westphalia.³⁶

In hindsight the Thirty Years War seems to have led to the loss of status of the former powers, especially the Catholic Habsburg Monarchies in Spain and Austria. The present period seems to be a period of considerable global instability – where the instability has for several decades been concentrated upon and particularly severe in the areas which have been home to the most important resource for modern societies – fossil fuel. To the extent the many are dependent on the few and reckless this may create an atmosphere of oppression, anxiety and insecurity amongst the many.

Lack of such resources and threat to or loss of former importance and status seem to lead to a certain existential insecurity of both privileged elites and ‘majorities’. These insecurities of the ‘strong’ have maybe – sometimes – been part of the power of the weak historically and globally, but they may also have led to exactly recklessness and brutality. Hopefully this is not what we have to expect from an increased Asian influence on globalization including normative globalization.

The Danish existentialist philosopher Søren Kierkegaard (1813-1855) wrote many of his books during a period of revolutions and considerable social, economic and legal changes in Europe. Denmark changed from Absolutism to a constitutional monarchy in 1849. Several of Kierkegaard’s books were written under a pen name, both because of censorship, but also because it enabled him to present different viewpoint and to act with different identities. Two of his famous books, both published in 1843 under two different pen names were “Fear and Trembling” and “The Concept of Anxiety”.

Stability and harmony are often considered prime Chinese values. The fear of losing stability and harmony may create fear and anxiety in Chinese society and leadership, but the new and emerging may at the same time hold an attraction. Perhaps some of the

36 See my article (in Danish) “Lange ‘krigsballetter’- før og nu” [Long War Ballets – before and now] in *Mod og mening: Hyldestskrift til Frederik Harhoff*. Edited by Hanne Marie Motzfeldt; Sten Schaumburg-Müller; Rikke Gottrup; Kim Østergaard. København : Djøf / Jurist- og Økonomforbundet, 2016. p. 423-434.

future Chinese contributions to global normative pluralism require an overcoming of fears, anxiety and trembling.

According to a 20th century Danish philosopher, Villy Sørensen, commenting on Kierkegaard, anxiety does not direct itself against the outer world, but is related to “inner fears, which are connected to a realization of one self. Self is spirit... and a human is only free as spirit. It is the not yet realized freedom, which is expressed in anxiety... In a temporary unstable harmony freedom only exists as a human potential to realize actual possibilities... the human being fears to loose itself, as it is at present, but nonetheless wishes to act to become itself and win a deeper harmony. Freedom is at once fascinating and frightening.”³⁷

37 Here quoted from Hanne Petersen, *Ret og usikkerhed i overgangstider. Danmark og Grønland som eksempler* [Law and insecurity in times of transition. Denmark and Greenland as examples.] In Damgaard, Henrichsen & Petersen (eds): *Ret & Usikkerhed* [Law and Insecurity]. Jurist- og Økonomforbundets Forlag, 2005, p.209 (my translation of Villy Sørensen).

Community Governance and Social Capital Accumulation in Shanghai

Liu Chunrong

Introduction

Over the last two decades, there is a growing research interest about the role of social capital in deepening democratic politics and making sustainable development and economic prosperity (Coleman, 1990; Knack and Keefer, 1997; Fukuyama, 1995). Social capital is widely defined as *resources* that actors may access through social ties (Bourdieu, 1986; Coleman, 1988). As a particular feature of social life - networks, norms and trust, social capital can “enable participants to act together more effectively to pursue shared objectives” (Putnam 1995:664-5). While the proponents in this camp vary, a general claim is that social capital, as a relational resource, is the building block of civil society, the solution to social dilemma and the source of collective efficacy, and it can make governance more sustainable.

If social capital is such an important social asset, how can it be generated? The fascination with the concept of social capital has been mostly directed to its impacts, leaving the origin of social capital less understood. Furthermore, while much work seeks to understand social capital in the liberal democratic institutions, fewer studies have been done on the formation of community-level social capital under authoritarianism.¹

This study sets out to explain the dynamics and impact of neighborhood social capital accumulation in urban Shanghai. Neighborhoods have long been imaged as the soil in which “free space” arise, and where we find the potential for civic culture, for the realization of the common good, and for the fulfillment of the democratic promise (Ferman, 1996: 13; Evans and Boyte, 1986). In the contemporary Chinese urban society, neighborhood is an administered space officially organized by the state-led Residents Committee (RC), which serves as the primary agent of policy implementation and social and economic transformation of the localities (Whyte and Parish, 1984; Pan, 2002; Read, 2012). During the last two decade, such a pattern of community organizing has undergone enormous changes in the general scheme of “Urban Community Building” (UCB),

1 Chen and Lu (2007)'s research on reservoir of social capital in Beijing is an exception. They found that there are positive relationships between social capital and resident's confidence in the popularly elected residents committee, support for self-governance norms, and activism in self-government.

an effort envisioned to increase residents' community engagement and incorporate various neighborhood-based groups into grassroots political process in a deliberative and participatory fashion. This grassroots experience raises interesting questions on whether and how a certain form of civic ties can emerge within the neighborhood.

The central theme of this paper is that new approach of community organizing may generate opportunities and resources for neighborhood social capital accumulation. While administrative community governance may contribute to top-down state control by breeding selective individual dependence, the emergence of issue-based deliberative institution - as can be found in the experience of urban community governance reform in Shanghai - has become an important source of information about the reliability and capabilities of their neighbors, and it functions as a salient springboard for collaborative interactions among the residents.

This paper is organized as follows. In the next section, I provide some theoretical considerations on the logic of social capital formation, namely, whether and how can state intervention shape social capital accumulation under authoritarianism. I then show the evolution of neighborhood governance reform in Shanghai. Next, I muster ethnographic evidence to show how community governance restructuring has been fostering new patterns of social interaction that help accumulate social capital at the neighborhood level. I conclude with a discussion on the implication of state-led social capital in China's local governance transformation.

Sources of social capital

Although there is a wide consensus about the merits of social capital, we still lack a common and clear definition of it. While Coleman (1988) and Bourdieu (1986) conceptualize social capital as a feature of groups that resides not in individuals but in the relations between individuals, Putnam (1993) and many development theorists (Evans, 1996) bring it into macro sociological theory by claiming that social capital could be aggregated and ultimately functioned as a resource to solve collective action dilemma.² In this paper, I assume a broad definition of social capital that Grootaert and van Bastelaer have proposed: "the institutions, relationships, attitudes, and values that govern interactions among people and contribute to economic and social development" (2002:2). According to this definition, social capital is the result of the use of resource through interpersonal

2 For an overview of different conceptualizations of social capital in the literature, see (Newton, 1997; Portes, 1998; 2000; Jackman and Ross, 1998)

engagement. The broad definition serves the purpose of this study, that is, to explore the dynamics of trusting ties and public engagement within the residential community.

While rational choice theorists have attempted to explain social capital through an evolutionary account, as something that develops over repeated interactions between two self-interested actors in a dyadic relationship, the so-called “Tocquevillian Model” tends to associate the formation of social capital and trust with variables such as “civic culture” (see for example, Brehm and Rahn, 1997). It is often argued that voluntary organizations can help provide social capital and sustain co-operation once it has begun. Such an approach, however, is not without problems. As Whiteley (1998:6) notes, it fails to explain how social capital might emerge from a primeval state of non-cooperation.

Recent studies on social capital stress the importance of the institutional factors. It is argued that for social capital to emerge and flourish, it needs to be embedded in and linked to formal political and legal institutions (Levi, 1996; Tarrow, 1996; Rothstein and Stolle 2003; Hooghe & Stolle, 2003; Paraskevopoulos, 2010). According to this line of thinking, social capital does not exist independently of politics or government in the realm of civil society. Rather, it is created, channeled and influenced by government policies and political institutions. Institutions may exert an independent effect on trustworthiness, and thus on how social actors trust or distrust each other. Essentially, institution matters because civic activity is not a natural phenomenon (Skocpol, 1999).³ In Tarrow’s words, “state plays a fundamental role in shaping civic capacity” (Tarrow, 1996:395). Political authority that performs well and equitably contributes to the “trust, norms, and networks” (Putnam, 1993:167) that enable people to solve collective action problems (Kenworthy, 1997). Institutions that require more citizen input may also provide an impetus for people to become engaged in something other than their private lives (Schneider, et al. 1997).

Addressing state-society synergy in developmental issues, Heller (1995) examined the relationship between state intervention and social capital formation. As the case of state of Kerala in India indicates, developmental successes are closely tied to the exceptionally high levels of social capital, which is matched by the activism of the state. Class mobilization and state interventions, which aimed at providing public goods, have built directly on

3 Further to Tocqueville, Skocpol (1999: 298) illustrates other institutions in the American context that can foster civic engagements which include religious competition, ideas about personal initiative and civic duties, the structure of elections, Congress and state legislatures’ openness to petition drives, the growth of newspapers. It is also demonstrated that historical factors have also triggered major periods of associational growth (Skocpol et al., 2001).

existing social capital resources and have in turn reinforced social capital. In a similar vein, Fox (1996) studied the “thickness” of civil society in rural Mexico by stressing the role of “extra-local horizontal linkages”:

As we know from the Mexican experience, the classic formula of ‘cooptation when possible and repression when necessary’ usually works. Divide and conquer tactics are most effective where local movements are isolated, so the key question becomes when and how social actors become able to build horizontal links between often disconnected or divided local social actors. If one surveys the rich diversity of experiences in rural Mexico, it turns out that where such extra-local horizontal linkages have emerged, external allies, whether embedded elsewhere in society or in the state itself, have often contributed greatly to the process (1997:4).

In the rubric of what he called “political construction approach”, Fox contended that reformists in less-than-democratic regimes may create positive incentives for collective action from below, and buffer the negative sanctions that other state actors usually deploy against autonomous collective action. This further suggests that social capital does not develop out of institutional vacuum under authoritarianism. While the accumulation of social capital could be explained as a consequence of preexisting trust and generalized expectations of reciprocity in a liberal democracy context, such a process depends heavily on a broader institutional dynamics in the authoritarian context. As will be elaborated, institutional linkages provides crucial contextual opportunities, organizational resources and incentives that promote or inhibit social capital accumulation among the residents.

Nested in the Chinese urban governance, the institution of RC does not fall completely into an image of absolute control over the neighborhood life except in extremely situations.⁴ While RC is obligated to assist government policy implementation, it is legally defined as a self-governing body in the Article No. 111 of the Constitution (the 1952 version). It is “mass self-managing organization at the grassroots level” for “self-administration, self-education and self-service”. In reality, RC carries a dual function of both top-down administrative control and bottom-up voluntary participation. According to Mok (1987), such a pattern of community organizing echoes “the principles of self reliance and community orientation in socialist construction” where “local people are encouraged to infuse new life into themselves through their own efforts”. In addition, neighborhood

4 RC might have coercive power and even conduct political persecution in Mao's China, as pointed out by Whyte and Parish (1984), that it possessed considerable capacity to apply pressure to residents and make life difficult for them if they got out of line.

governance reform may open window of opportunity for social interaction, generate resources and selective incentives for local residents and activists to engage with each other. Newly created institutions and governing process would prove instrumental in motivating community participation. As a response to the liberalization of neighborhood governance institutions, residents are likely to be motivated in social engagement through which they can control the community. It is with such a changing action context that some form of reciprocity and trust within the community may be spurred and reinforced.

Reconfiguring Community Governance

Community-based mobilization has been widely considered as the key to local governance and sociopolitical transformation in China. Numerous studies have shown the power of volunteerism in China's communist revolution. In both everyday politics of the community and the dramatic events of political campaigns, state-led activism emerge and serve to overcome the gap between leaders and masses. Indeed, vibrant mobilization of voluntarism indicates the concept of mass line as "a particular instance of the CCP's desire for a generally high degree of activism and political consciousness among the people" (Townsend, 1967: 75).

In urban residential community, the prevailing form of state-led mobilization is constructed and crystallized by what Benjamin Read called "administrative engagement institution" of RC (Read, 2012). Situated at the bottom of governing structure in urban China, RC functions as the geographically based components of sociopolitical control by informally engaging a group of community activists, who may not hold formal leadership positions in RC or the Party's neighborhood organization but substantially connected the state-led RCs and ordinary residents. Over time, RCs with its affiliated grassroots activists have a decisive role on community-level problem solving. They would help disseminating information, and occasionally help distributing goods and delivering services to the neighbors living in their vicinity.

Rapid urban transformations since the 1990s have shifted tremendous social functions and occupational welfares from the work unit (*danwei*) system to the local community, and thereby adding the administrative burdens of local governments (Lee 2000; Chan 1993; Wong 1998). In addition, various new neighborhood-based social and cultural spaces have emerged as a result of housing privatization, increasing leisure time and social autonomy (Davis et al. 1995). These dynamics have triggered a phenomenal process of community governance reconfiguration in the national scheme of urban community building since late 1990s. Local authorities have been encouraged to conduct experiments

of institutional reforms for strengthening grassroots governability and promoting community-based participation and service delivery.

In Shanghai, an integrated framework of “two layers of government, three layers of administration” was formulated by the municipal government in 1996. The street office was established as “the third layer” of urban administration and authorized with greater jurisdiction in community service and social regulation (Shi and Pan 1998). Meanwhile, RC was revitalized as the fourth level of urban governance with overwhelming top-down administrative work assignments. According to the “Policy Paper on Strengthening Street Office, Residents Committee and Community Management in Shanghai,” issued by the Shanghai municipal government in 1996, the street office was converted from a “subordinated agency” of the district government to a community-rooted governing agency with regulatory functions. It stipulated that the administration area of each street office should be reconfigured and standardized to cover five square kilometers (or about 100,000 residents). Second, the standard quota of every street office’s “approved positions of public servants” was increased from approximately 55 to 60. Third, to change its previous marginal status in the urban government, the street office was to receive more autonomous financial resources via a new street-level fiscal system. The overarching district government would be responsible for funding the street office through fiscal transferring.

Despite that decentralized governing framework has largely expanded the scope and reach of the administrative state; it offers few bottom-up channels and incentives for ordinary residents to participate in the communitywide decision-making process. The Shanghai approach of community governance has thus been reflected for being too “bureaucratized” in contrast to the experiments in other cities like Shengyan and Wuhan, which boasts heavier bottom-up initiatives. Indeed, from the perspective of RC cadres, one of the major obstacles to UCB is the lack of spontaneous voluntarism spirit from residents. The low degree of voluntary community participation in Shanghai places RC and the street office in an awkward position that does not meet the policy vision of UCB.

To extend the street office and RC into the increasingly complicated urban fabric and make more possibilities for residents’ engagement, policy reorientation has been adopted in late 1990s by altering the previous pattern of neighborhood administration. An evident reconstruction from “administrative integration” to “democratic empowerment” began to occur, aiming to empower local residents and obtain representative inputs in the neighborhood political process (Liu 2008). The most prominent measure for this end has been the promotion of RC direct election, which was piloted in 1999 in two street offices,

and expanded to over 1,000 RCs, or 30 per cent of the total RCs in 2003. In 2006, more than half of the RCs in the city were reorganized by direct election. The election in 2009 witnessed 84 per cent of RCs reconstructed by direct election with an average voting rate of 86 per cent (SBCA 2009). By giving residents a voice in neighborhood governance and strengthening the representation capacity of RC, urban grassroots election paves ways for community-based participatory politics.

To advocate grassroots self-governance, the post-election administration of RC is reconfigured with the principle of “separation of deliberation and administration” (*yixing fenli*), which offers “voluntary positions” in the RC. Official statistics reports that 33 per cent of the elected RC cadres work in a voluntary mode in 2009 (SBCA 2009). Meanwhile, paid professional social workers, regarded as “administrative force”, are hired by street office to serve the voluntary RC members.

A complementary policy measure to expand bottom-up engagement is to organize advisory body to RC, which takes the form of the “deliberative assembly” (*yishi hui*) in many neighborhoods. A model deliberative assembly was pioneered in *Jing’ansi* street office in 1996, which was designed with four principal functions: raising suggestions for local public affairs, mobilizing residents and homeowner associations to engage in community problem solving, exploring residents’ attitudes towards the RC’s work, and cooperating with the Party’s neighborhood branch. In *Huashan* neighborhood under *Jing’ansi* street office, for example, the deliberative assembly consists of 13 members, 10 of whom have college or university education and high social reputations in the local community (Lin 2002: 206).

In 2010, a more systematic experiment was developed in association with the Shanghai Expo. To articulate the Expo theme of “better city, better life”, the city government identified 21 “model self-governance communities” and explored self-governing mechanism from within the community. The overall goal of this project is not completely new as can be found in the previous reforms: to innovate the institutional space for local residents to engage in community problem solving. New strategies of neighborhood organizing assume that community problems need bottom-up initiatives rather than simply relying on feeder institutions such as RC and the overarching local government. This orientation leads to a further round of experiments of community governance reform, and provides a good opportunity to probe the coevolution of community governance reform and social capital accumulation.

Social capital accumulation in Gulong

In 2010-2011, I conducted ethnographic fieldwork in Shanghai and observe the implementation of “model self-governance communities” project. Key research concerns are: how is this project implemented on the ground? To what extend can this project make sustained grassroots participation and shape social relations that are heralded by social capital and civil society theorists?

A popular approach in the model self-governance project is to explore solid platform of social engagement that goes beyond the grassroots administrative network that extensively used by the local government. In *Gulong*, a newly established gated residential community under the jurisdiction of *Gumei* street office of *Minhang* district government, which is home to 962 registered families and 2,300 residents, a “community caring committee” was fostered by RC as a main channel for resident participation. In the eyes of Mr. Zhou, the RC director in Gulong, “The starting point of organizing an active community, as we did in Gulong, is to facilitate residents to organize by themselves, not delivering public service from the government. It made no sense to make symbolic participation in such community where residents are well educated and most of the residents are white collars and professionals. In addition, residents are more informative about their problems, more conscious about their own resources; they can define their way of participation, as well as the issues to be discussed. In Gulong, they might be preoccupied with knowing each other within the community, instead of turning to local government for material supports.”⁵

The community caring initiative in Gulong was actually initiated and managed by some volunteers with a vision of “living in harmony, living with quality”. The coordinator, Mrs. Xu is a community-spirited Chinese communist party member. She has retired from a state-own enterprise and she has been thinking about resident’s self-governance from a social perspective: “we may need to know each other in our community just as we did in our *danwei* (work unit), otherwise you don’t have a sense of security. Without security, there is no quality of life. I believe families in our community can always find a good way to interact with each other, and once people can be better connected, and we can be more informed with our community’s problems and resources. And, helping each other is congruent with government’s expectations, so it is not a problem for us to work with RC.”⁶

5 Interview, 16 June, 2011.

6 Interview, 16 June, 2011.

The community caring committee has turned out to be a multi-functional socializing space with lots of group discussions about community affairs. With the support of Mr. Zhou, the caring committee took an important effort to figure out a list of resourceful residents (mostly professionals) in the neighborhood. Together they paid a visit to those “resourceful residents” and established contacts. Eventually eight of them volunteered to be coordinator for the committee, taking care of environmental and cultural affairs. For example, Mrs. Sun, one of the eight coordinators, is leading a small group of volunteers for “pet club” through which they help advocate a “civilized habit of pet raising”. The club has a regular meeting in the first weekend of each month and they invited RC to sit in the meeting and share the information and inputs about how to regulate the pet-related problems. In addition, Mrs. Sun initiated a “green group” in which the volunteers work closely with the housing management company to register trees and flowers in the community and promote waste recycling.

Mr. Zhou was not staying away from these bottom-up initiatives, instead, he offered helpful hands by supporting the caring committee to figure out community problems and mobilize resources. According to Mrs. Xu, “This is a harmonious way of cooperation. We trust each other and often we handle problems together. For example, we find that one of the most common concerns by many young parents is that kids lack a good collective learning environment in our backyard. Some parents suggested that kid should have an opportunity to learn together in Gulong, and that kids can learn better together than just learn with parents.”⁷As a response, Mr. Zhou and our committee members start to organize a kid reading club. Mr. Zhou also helped recruit some literacy teachers to the club with the aid of street office. The reading club was led by Mrs. Ge, who is a mother of a 4-year-old son and it became an exciting source of family interactions in the community.

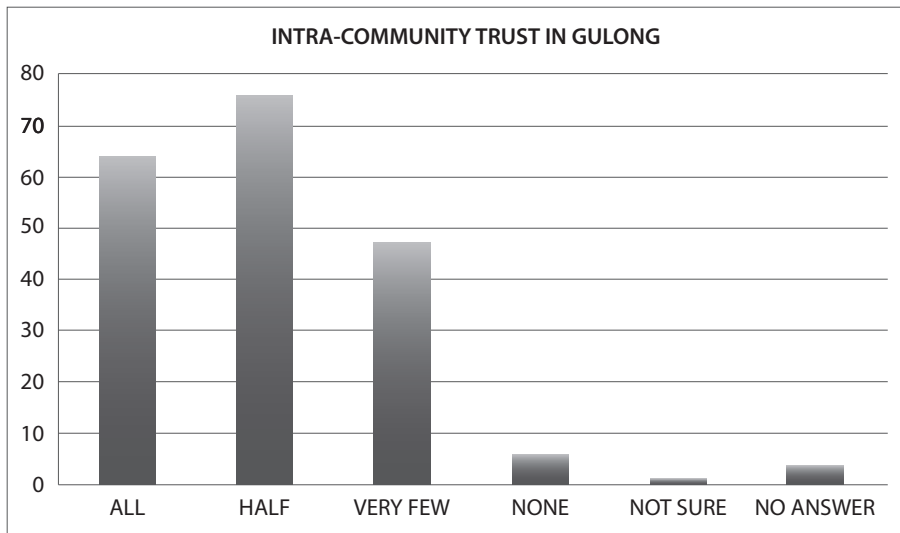
With the role of RC changed from a control agency of local state for policy implementation to a facilitator of residents’ participation, more bottom-up initiatives have been emerging, which in turn have made RC more responsive. In December of 2011, the community caring committee launched a “competition and exhibition of best picture in Gulong”, which encourages residents to showcase their photography about the Gulong community. This program was again co-organized by RC and got a generous financial donation from several private entrepreneurs who are also local residents. Through two rounds of voting by the committee and a professional advisory group, twelve pictures were finally selected for the awards and they were printed as a “Happy New Year of 2012 Calendar”. The

7 Interview, 18 June, 2011

calendars are distributed to every family as a gift. Now this best Gulong picture award has become an annual routine activity that enjoys high popularity among the local residents.

As a result of these interactions, a participatory norm can be felt in Gulong which has made common problem solving more effectively. In 2013, a small-scale survey (N=198) was implemented by RC to gauge the popular support for RC-led mutual-help caring committee. This self-administered survey (n=198) showed a positive of social life in terms of interpersonal trust. When asked, “how many residents would you like to trust in Gulong”, about 23% (n=64) of the correspondents think “all the residents are trustable”, still 38% (n=76) believe that “half of the residents are trustable”. The survey is by no means complete. Nonetheless, it reveals that, with the function of community caring committee, more and more residents are willing to trust and contribute to joint efforts in Gulong community.

Table 1. Interpersonal Trust in Gulong Residential Community



Source: Gulong Residents Committee Office (2013)

Concluding Remarks

As Tony Saich commented more than a decade ago, the neighborhood in which grassroots participation is practiced, should gain greater stake in the Chinese politics “with the expansion of the non-state sector of the economy and the work-unit providing less in terms of housing and social welfare benefits,” and “with individuals taking increasing responsibility for these” (Saich, 2001: 176). Importance as these bottom-up dynamics

are, students of Chinese politics still lack a framework to map whether and how these elementary forms of civic assets can develop and flourish. This case study has set out to explain this particularly process within the neighborhood space. With a theoretical device focusing community governance reform and social capital accumulation, we have demonstrated that state-fostered institutional reform can provide necessary conditions for local residents to engage in the neighborhood organization and interact with each other to solve indigenous problems. In particular, the deliberate construction of state-empowered participatory platforms, as can be found in the practice of deliberative assembly in Gumei community, provide important preconditions for horizontal interactions that facilitate the accumulation of social capital in urban China.

As indicated in the model self-governance program in Shanghai, neighborhood volunteerism, from the willingness to contact RC staff and initiatives to solve neighborhood problems and to the various sub-groups formation in deliberating the ways that neighborhood problems should be solved, are not developed out of the previous social interactions. Rather, this nascent form of civic life can be better explained by associating them to the politics of neighborhood governance reform, which is promoted by the overarching regime. This implies that we should pay sufficient attention to the overarching political mobilizing process in the making of social capital. State initiative matters largely because it opens the possibility and creates necessary incentives and resources for local residents to expand their civic life in authoritarian context.

Such a finding, although cannot be generated to other community settings because of scope of condition, it is arguably comparable in some cross-national observations. As Fung and Wright (2000)'s "Utopian Project" has shown, empowered state settings around such issues as community policing and school reform can effectively draw many participants who otherwise would have little community involvement. Baiocchi (2003) raises a similar theme in his study of Brazil's assembly of participatory budget, through which he finds that participants in these assemblies creates open-ended and public-minded discussions even in the power socioeconomic district settings.

To sum up, the scheme of urban community building may create a particular structure of social interactions for the engagement of residents in urban China. These overarching state-initiated networks which function as the "capital of social capital", provide resources and incentives for the residents especially those with less organizational power resources to interact and negotiate a meaning of community. Such a dynamics remains localized and even fragmented, it might in turn shape the governability of community in urban China.

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