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## Above the Roof, Beneath the Law: Perceived Justice behind Disruptive Tactics of Migrant Wage Claimants in China

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The way in which citizens in developing countries conceptualize legality is a critical but understudied question for legal consciousness and legal mobilization studies. Drawing on participatory observations and extensive interviews from western China, this article explores the subjective interpretations of migrant wage claimants on law and justice behind their disruptive actions. Their perception of justice differs starkly from what the law stipulates as target, evidence and proper procedures. Who shall be held responsible? What constitutes evidence? When shall they be paid? How much? Their perceptions also differ from the attitude “against the law” found among members from disadvantaged social groups in the United States. The Chinese case of legal perception is shaped by the moral precepts ingrained in the culture, and more importantly, by the lopsided relationship between migrant workers and the political and business elite. It thus points to the daunting barriers in channeling the ever-growing number of social conflicts into court.

Mom and Dad, I cannot come home for the Spring Festival;  
For I cannot face you without bringing back the year's pay.

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But I say to myself that I must remain calm;  
For I know there is justice under Heaven.  
I am the creditor, undoubtedly!  
It is them who owe me!

“It’s Them Who Owe Me.” A ballad written by Shi Yong, a migrant worker in China (Shi 2011).

One’s choice not to pursue legal remedies may be genuinely subversive when it exposes law’s cruelty

Kristin Bumiller (1988), *The Civil Rights Society: The Social Construction of Victims*, p. x.

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Millions of migrant workers from China's rural areas have contributed to the country's economic development. In 2009, the estimated number of rural migrant workers was 149 million (*International Online* 2010), more than the population of most countries. These migrants are relegated to the very bottom of the society, and they face daily discrimination and hard working conditions. Their dire conditions are compounded by a lack of education and connections in cities. Many cannot even collect their meager wages. Their frustration and sadness abound. Their situation has become so serious that Premier Wen Jiabao had personally collected the owed wages for one migrant worker, to call attention to the widespread problem (*CCTV International* 2003).

While a tiny, albeit increasing, number of migrants takes the wage arrears issue to formal legal channels, most would resort to other tactics. Some register complaints with petition officials, while others stage street protests. When these fail, more desperate acts ensue. Aggrieved workers have threatened to commit public suicide, throwing themselves off a building in full public attention. The purpose is to disrupt social tranquility, and to call attention to their plight from the authorities. In this article, we will characterize these practices collectively as *disruptive tactics*, a category of actions in contrast to actions through the officially sanctioned channels. The immediate consequences of these actions vary: a street protest may pressure the local government to intervene; a public display of suicide attempt may cause media frenzy.

The question of why migrant workers choose disruptive actions over legal ones deserves scholarly attention. Their actions are related to their views of law and justice, as well as their understanding of the effectiveness of disruptive tactics. In her book on labor protests, *Against the Law*, Lee (2007: 239) states, "[M]igrant workers . . . share . . . the language of rule by law and legal rights to articulate their critique of exploitation." O'Brien and Li (2006) also observe that law and legal battles have also become an integral part of the "rightful resistance" of rural citizens. For this group of authors, the recent waves of laws in China alerted awareness of the rights of China's weak and downtrodden. What is left unexplained, though, is why this new rights consciousness has paradoxically driven many migrant workers *away* from the legal system, and to engage in disruptive actions.

One explanation can be found in the recent work that studies the legal and political opportunities, or the lack thereof, available to laborers in dispute. This scholarship reveals the effectiveness of collective action in a country that is otherwise considered repressive. "Small hackling results in small solutions; big disturbance leads to big solutions," sums up a popular saying. Such opportunities are generated by a combination of new labor laws, weak

enforcement, and the governments strive to maintain a “harmonious society” (Lee 2007; Su & He 2010).

With the enactment of the Labor Law in 1995 and the Labor Contract Law in 2008, a set of basic rights for workers has been comprehensively enshrined in statute, emulating the standards of similar laws in developed countries. These include salaries, social welfare, labor safety and hygiene, and statutory limitations on working hours. In the meantime, these laws clearly outline the process for labor dispute resolution and stipulate the legal consequences of violations (Gallagher 2005). Actual enforcement, however, is another matter. There is a vivid contrast between the ideals and the impoverished reality of their enforcement. Fieldwork investigations before the implementation of the Labor Contract Law have revealed that a proportion of workers are not given the opportunity to sign labor contracts when they are recruited (Lee 2007). Even in many state-owned enterprises, workers’ rights, including compensation for medical expenses and pensions, are far from fully realized in practice (Hurst & O’Brien 2002). The sorry state of enforcement is partly due to deficiencies in the law itself (Halegua 2008). The problems also relate to the weak capacity of the state to enforce the law. While the state, at the central level, sets a standard to protect labor rights, local government usually lacks the institutional infrastructure, staff, resources, and determination necessary to enforce this standard. To make things worse, local officials maintain a close, if not downright collusive, relationship with employers and thus will often take their side. This is because foreign and private investment has been an important engine for the development of local economies and local gross domestic product (GDP) is used as a crucial criterion for the evaluation of local officials’ performance by upper level government.

In this social and legal environment, disputants often take to the street, and officials often meet halfway outside the courtroom. Protest events aiming at inviting official intervention become an integral part of proceedings, if not the proceedings themselves. Su and He (2010) dub this phenomenon “Street as Courtroom”:

In the gap between the state’s rhetorical inspiration of rule-by-law and ineffectual enforcement on the ground, workers cultivate a political space for collective action. This coincides with the changing face of state reaction to social protest. When a myriad of labor disputes is a fact of life, the concern for social stability has pushed the Chinese government to react and also to innovate within the existing political and legal framework. In the absence of independent unions, the Party mobilizes assorted local government agencies to mediate between labor and business. It often does so on

behalf of labor interests under the new Party doctrine of the harmonious society. (163)

This pattern has gradually emerged since President Hu Jintao came to power in 2003. One telling indicator of such a change is that the official term to describe such actions has gone from “mobbing crowds” or “illegal associations” to the more neutral “mass incidents.” The new terminology serves as a signal of depoliticizing the majority of citizen protests as an inevitable fact of life, paving the way for the legal dispute to take place in the street.

Yet disruptive tactics has its limit. The window of opportunities is by no means open to all the disputants who are willing to take to the street. First, as any social movement scholar would attest, collective claim-making is difficult to mobilize, even more so for the poor and the downtrodden. Second, while some “big disturbance” may be rewarded with redress, many “mass incidents” meet official silence; worse still, participants and activists risk repression and jail terms. In extreme cases, a lone individual, when incapable of wage collective action, threatens suicide from a rooftop. Tragedies often ensue, when such an attempt for spectacle is poorly executed (Xu 2008).

Therefore, political opportunities are by no means sufficient to explain why the wage claimants bypass law but adopt disruption. We have to also account for how legal channels become unattractive in the first place. If political opportunities represent a “pull” factor by the street, we have to explore what “push” the potential litigants away from the courtroom. In this paper, we do so by exploring the migrant workers’ legal consciousness, one that is grounded on their living experience with the law and in the meantime embedded in their cultural percepts of justice.

Existing studies of legal consciousness in China tend to focus on those who have chosen the formal legal channels (Gallagher 2006; Ho 2009; Landry 2008). The findings from a few authors who touch upon the public attitude toward official justice offer inconclusive evidence to the question. For example, Gallagher and Wang (2011: 230) contend that “[Y]ounger, non-state workers tended to take their cases directly to the legal system after direct negotiations with management failed . . . They barely even contemplated going to the government’s petitioning offices.” Michelson and Read’s (2011) survey suggests that those who have no experience with the formal legal systems tend to view the system positively, even though their view of the legality would soon be replaced by “informed disenchantment” once they start engaging the system. Why, then, would most migrant workers, most of whom are young and employed outside the state-owned sectors and have little experience with the formal legal system, decide to never bother with the legal

process, or to take disruptive actions after brief initial contact with officials?

This study explores the migrant workers' mental frame and examines their self-understandings of law and justice. Instead of detailing the objective conditions (Gallagher 2005; Halegua 2008; Lee 2007; Shi & Cai 2006; Su & He 2010; Woo et al. 2007), it focuses on the claimants' subjective interpretation of the situation at hand: How do they perceive law and legality? How does their perception affect their choice of action? How are their views sustained and reinforced? These are critical questions for understanding the development of legal consciousness of this group of individuals and its relationship to the underlying socioeconomic structure. They will also shed light on whether legal rights will take hold among this group, and if any, what kind of legal mobilization will result.

## Theoretical Considerations

In this paper, we follow a research tradition known as "legal consciousness of ordinary people" (Engel 2005: 508), "perception of justice of people in the street" (Bumiller 1988; Engel 1993, 2005; Engel & Engel 2010; Ewick & Silbey 1998; Merry 1990; Sarat 1990; Yngvesson 1993) or "law in everyday life" (McCann & March 1996). This tradition emphasizes law's pervasive presence throughout society, beyond as well as within official state institutions. As McCann and March (1996) note, whereas much traditional law and society research focused on either the social factors that "produced" official law, the inquiry into legal consciousness is directed toward law's power in "the everyday rather than the exceptional, in the routine rather than the rare, in the hardly noticed experiences rather than the high profile disputes over "hard cases" of law (pp. 209–10). It is law's significance in the lives of "ordinary" citizens—especially the working classes, the poor, women, and people of color—rather than "elites" that is the primary concern.

As such, law as the subject of inquiry is understood not so much as discrete rules or official decisions as specific cultural conventions, logics, rituals, symbols, skills, practices, and processes that citizens routinely deploy in practical activity. In this view, law operates not apart from or "on" social life, but within and through the very cognitive experiences and intersubjective relations of routine social practice. Legal knowledge forms part of each citizen's "consciousness," which develops and changes over time through practical experience with legal conventions. Hence this scholarship represents a shift of attention from the objective, from "the things out

there,” from the “law” as commonly understood (in the forms of codes, rules, procedures), to the subjective, the perceived and the experienced. That is, it represents an approach of studying legal consciousness.

### **Two Dimensions of Legal Consciousness**

Engel (1993) distinguishes two dimensions of legal consciousness. One focuses on law as a discrete but loosely interrelated rules, norms, logics, discourses and procedures (see also McCann & March 1996; Brisbin 2010). Accordingly, legal consciousness implies a familiarity with, and working knowledge of, particular legal conventions. The other dimension emphasizes a broad understanding of law as a whole “system,” how it should work, how it does work, and for whom. McCann and March (1996) characterize the former dimension of legal consciousness as a consciousness “of” the law, and the latter as a consciousness “about” the law. The former is instrumental consciousness of operative legal norms, while the latter is broadly systemic or institutional conception (p. 215).

Past work often presents both dimensions without drawing a sharp distinction. Sarat (1990) shows that welfare poor subscribe to neither a hegemonic myth of rights nor a picture of law as autonomous, apolitical, objective, neutral and disinterested. That is a consciousness “about” law. In the same time, his work also shows how the welfare poor are able to operate tactically on law’s terrain. That is, they are equipped consciousness “of” the law. In Ewick and Silbey’s (1998) study, Millie Simpson’s institutional consciousness “about” the law lies in the fact that she believed the system’s process, followed its rules and deferred to its procedures; her instrumental consciousness “of” the law manifested itself when she managed to “alter the trajectory” of law when she engaged in specific practical maneuvers. Merry (1990) similarly demonstrates how her subjects view the legal system generally in their sense of entitlement to legal relief; but she also shows people learn from their experiences within the courts and how they use specific tactical knowledge.

Empirical findings from research on legal consciousness have generated insights for a wide array of groups and settings (e.g., Bumiller 1988; Engel 2005; Engel & Engel 2010; Ewick & Silbey 1998; Nielsen 2000). Nielsen (2000) analyses the perception of law on offensive speech in public places across different groups of American citizens. She has not only conducted in-depth observations, but has also collected systematic data comparing gender, racial and ethnic groups. Engel (2005) brought cases from outside the United States, and he showed the fruitfulness of cross-cultural comparison. To cite one example, Buajan, a 39-year-old Thai

woman, could have reacted differently to a car accident in the city that left her with a broken leg. Had she remained in her village, according to Engel (2005), her injurer would most likely have been a fellow villager and hence compelled by local customs to pay damages; otherwise Buajan would choose to pursue a traditional remedy in the provincial court. But Buajan experienced the accident in a city where she was uprooted from her village. "With these changes came others that affected the conceptualization of her injury and the range of options she could imagine in response" (Engel 2005: 509). Buajan and other informants in Engel's work thus found legal recourse elusive.

It is along this line of inquiry into *situated* legal consciousness that we investigate our case. It is about a unique social group who occupies the society's bottom stratum. It is also rooted in a different political system and culture from those in the existing literature. Our task is to pinpoint specific aspects of the migrant workers' legal consciousness that impinge on forms of resistance or shape forms engagement. To account for why immigrant workers in China bypass normal legal channels but take on disruptive tactics, we follow Ewick and Silbey when they note: "The ways in which the law is experienced and understood by ordinary citizens as they choose to *invoke the law, to avoid it, or to resist it*, is an essential part of the life of the law" (Ewick & Silbey 1992: 737, emphasis added). Our analysis will show that it is not only useful but also essential to differentiate the above two dimensions. On the one hand, the workers hold a steadfast view of justice that is deeply ingrained in the Chinese culture: one should get paid for one's work. This consciousness "about" the law equipped them with a source of righteousness and justice. On the other hand, they do not necessarily follow the letter of the law owing to the collective understanding and frustration of its complexity and futility. Their conflicted attitude toward the law would send many of them away from the official system. Instead, they would stage protest on the street, or even on the rooftop, to obtain redress. We contend that the origin of disruptive tactics lies in the tension between the two dimensions of legal perception: the working knowledge of the law (consciousness "of" the law) and the cultural perception of justice (consciousness "about" the law).

Our fieldwork data will document the living experience of the migrant workers' dealing with the legal system, which has the implication for their understanding "of" the law. We will also discuss the cultural root of the belief that "a day's work gets a day's pay," augmented by the rhetoric of that regime that proclaims "socialism" and "serving the poor." Their conclusion about the operative side of the law would drive them away from the court, while the sense of justice empower them when they decide to



“litigate” their case in the public place, be it in the street or on the rooftop.

## Data and Methodology

The findings reported here are based on data collected from two periods of fieldwork in County Z of Sichuan Province in Western China. In 2009, one of the authors first conducted his dissertation project there (Wang 2009).<sup>1</sup> In the summer of 2010, three authors formed a team and conducted a second study for about a month, building on an initial network of acquaintances made earlier. We interviewed migrant workers, and in a few cases followed their wage collection processes from beginning to the end. We also interviewed middlemen, managers, lawyers, and government officials.

Located in the country’s heartland, Sichuan Province is behind the booming coastal cities in economic development. Of its population of 780,000, more than 75 percent are rural, which suggests that agriculture remains the pillar of the local economy. According to official statistics, county Z’s GDP per capita only reached 19,000 yuan or USD 3000 in 2010, about half of the level in more developed coastal areas. The region’s underdevelopment has led the central government to mount a Grand Western Development campaign to bring high-profile investment projects to the region. As the time of our fieldwork, the county seat was experiencing a construction boom. The construction workers were farmers coming to work daily from villages in the county and surrounding areas.

While the construction sector provided migrant workers job opportunities, it was poorly regulated. Stories of unpaid wages were routine. For reasons that we will elaborate later, the situation of wage earners here was particularly precarious, compared to their counterparts in the coastal region. Almost every day, there were migrant workers coming to the county government with wage disputes.

We met and interviewed our subjects in two ways. We first waited outside the buildings of government agencies in charge of labor issues such as the county’s Labor Bureau, Construction Bureau and Township Government. We talked to the complainants as they went in to lodge complaint or as they were

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<sup>1</sup> Wang’s dissertation thesis (2009) mainly concerns collective action by migrant workers and its legal ramifications. This current study, on the other hand, is focused on perception of justice.



leaving afterwards, successfully establishing rapport with some aggrieved workers. We enquired into their view of legality and law, and the rationale they had for their actions. Specifically in two cases (Informants A8–A13; Informants A15–A17), one of us followed the development of their cases for a few weeks, engaging in participatory observation of their action in collecting their unpaid wages through a variety of avenues. In addition, we witnessed three other collective wage collection events, observing their interaction, and recording their formal and informal conversations with government officials and employers (see Appendix).

In the parallel to these interviews, we talked to others who significant to the migrant workers' claim as well as their normal working life. Those individuals included their targets of complaints (owners, managers, and middlemen), lawyers representing them, and government officials handling their case.

We use pseudonyms for our informants recorded here. When appropriate, we secured their consent to tape-record the conversations. In other times, we kept detailed field notes in writing.

In total, we interviewed 43 individuals, spending at least 1 hour with each of them. In some cases, we spent more than 10 hours together (please see Appendix for a list of the informants). Table 1 presents other breakdown statistics. We assign each informant a number, to be used as reference in our discussion below. Among them, 22 were migrant workers, 16 government officials, and 5 middlemen, managers or lawyers. Workers we interviewed were between 18 and 45. They were overwhelming male, as the majority of the construction workers are male in this region. Most of them were from outside County Z. Government officials and others age between 30 and 50, most of them from County Z.

**Table 1.** Profile of Informants in the Fieldwork Studies in County Z, 2009–2010

By Informant Type	By Gender	By Home Origin	By Industry	By Year of Interview			
Migrant worker	22	Male 40	Within the county 17	Construction	22	Year 2009	21
Government official	16	Female 3	Outside the county	Other	21	Year 2010	22
Middleman	3					Year 2011	1
Lawyer	1						
Manager	1						
Total	43	43	43	43			43

## Exclusion from Formal Legal Channels

“No, we will not bother with the court. We do not have time for that. We want our pay now. We do not have money for that—we cannot afford lawyers. We are here now and see if the government will intervene. If not, we will go to their [the company’s] headquarters this afternoon, and block the traffic at their gate.” (Informant A6, Male, Carpenter)

Wage claims by migrant workers have become commonplace since China intensified its regulation of the labor sector. Both policy makers and academics have hoped that legal reforms would provide some protection for the workers. Indeed, the state has significantly reduced the cost of accessing formal dispute resolution mechanisms (State Council 2007) and in 2008 it introduced a Labor Contract Law that is more favorable than the past law toward protecting labor rights. These efforts have not been futile: the formal legal channel has handled an increasing number of labor disputes (Gallagher 2005). However, data on arbitration and court cases tell only about the numerator but nothing about the denominator. A more accurate evaluation of the workers’ rights in the resolution of labor disputes requires consideration of the situation of aggrieved workers from which these full-blown disputes are selected. We must also understand how disputes are handled outside of the formal legal system. In other words, we need to consider the situation of those who never had their grievances filed in the formal legal channels.

A survey by Xinhua News Agency found that nearly three-quarters of migrant workers have trouble collecting their wages (Pan 2003). A majority of those polled said that the best way to get their money is to beg, bargain with or harass their employers; barely a quarter considered seeking help from the government and less than 2 percent preferred going to court (Pan 2003). Another report has found that in 2005, Dongguan municipality, a stronghold of labor-intensive enterprises, in Guangdong province recorded 43,406 labor disputes, but only 7055 labor arbitration cases (Xu 2008: 265). According to a survey of migrant workers in two provinces, only 14.7 percent believe labor arbitration is the most effective means of resolving labor disputes (Jiang 2006: 117). As shown in Table 2, our fieldwork investigation indicates that only a fraction of the disputes were subjected to labor arbitration—the formal legal channel, compared to those seeking informal administrative channels. Furthermore, there is no way to ascertain the number of disputes that have never entered into the official statistics.

Behind the low rates is a seriously flawed formal system that excludes the majority of wronged migrant workers. The

**Table 2.** Number of Informal Complaints and Labor Arbitrations in County Z (2004–2008)

	Informal Administrative Complaints	Labor Arbitrations	Ratio between Arbitration and Complaints (%)
2004	362	10	2.76
2005	482	N/A	N/A
2006	365	73	20.00
2007	316	26	8.22
2008	407	13	3.19

Source: Authors' fieldwork investigation.

compulsory arbitration stage, for instance, has merely become a procedural barrier for many to access court (Gallagher & Wang 2011). As detailed by Halegua (2008), the high cost, long duration, migrants' lack of legal knowledge and representation (Michelson 2006), and difficulty in having arbitration and court decisions enforced are chronic problems undermining the efficacy of the formal channels.

The institutional environment, however, only tells part of the story. A more fundamental reason lies in the nature of disputes and especially in the lopsided power relationship between migrant workers and their employers. Migrant workers lie at the very bottom of Chinese society (Solinger 1999, 2006). Without urban household residency, their employment opportunities are limited to short-term low-wage jobs; social security welfare and hygienic protection measures are rarely provided (Pun, Lu, & Zhang 2010: 112–63). Abundant supply also undermines the migrants' bargaining power vis-à-vis their employers. If a migrant worker would request a written contract when looking for work, the employer would just view him as a troublemaker and choose a less demanding worker. In this situation, the only recourse that the workers have is the legal requirement that employers shall provide written contracts. But as one migrant chuckled at the idea: “how could an uneducated person like me start discussing specific legal stipulations with my boss?” (Halegua 2008: 277)

Moreover, when they come to city, many of them find jobs through their fellow villagers, or a middleman or subcontractor. Migrant workers often do not even think of requesting a written contract. They usually regard a formal employment contract as unnecessary. As one migrant worker put it, “I was introduced by a friend from my hometown (*laoxiang*), so if I don't have a contract, it is no big deal (*mei shi*)” (Tong & Xiao 2005). They also fear that they will be fired or blacklisted by other employers if they make such a request (Tong & Xiao 2005).

In County Z, Sichuan province, many workers do not even know what a written contract is. This situation is consistent with reports from other regions. In the Pearl River Delta, where the labor market is more regulated, many workers are not even given a chance to sign a written employment contract (Lee 2007). A survey of 1000 migrant workers in the city of Harbin found that only 19.58 percent had written contracts, over half had oral agreements and 21.11 percent had never discussed anything of the kind with their employer (Tong & Xiao 2005). According to other estimates, less than 10 percent of migrant workers have written employment contracts (Kuhn 2004).

Whatever the reason for not having a written contact, when disputes arise, migrant workers usually lack the most rudimentary evidence to prove the existence of the employment relationship, let alone evidence of wage arrears, working days, and hours. Some are fortunate enough to obtain a written letter documenting their work record from their fellow workers. Indeed, few workers are willing to confront their employers in the formal settings, fearing reprisals or gaining a reputation for making trouble (Halegua 2008).

The situation becomes even worse in the construction industry where most unpaid wages occur and where most our interviewees are employed. In these usually short-term projects, where large numbers of workers are needed and turnover is high, the middlemen, dispatch companies, or team heads serve as labor brokers, connecting user companies with labors (Halegua 2008: 277–78). The user companies offer to pay these brokers to find workers. But these brokers may not even be registered as legal entities. In some projects, there are six to seven layers of subcontracting (Pun, Lu, & Zhang 2010: 130–31). It is unclear which entities are the real employers. Once the wages are not paid, either because the user companies or subcontractors collapse, disappear, go bankrupt, or because the brokers keep some or all of the money, migrant workers have no idea which parties shall be held legally responsible.

## **Disruptive Tactics**

While only a small proportion of the cases go to the formal legal channels, many cases were abandoned by the migrant workers, and others are resolved through informal administrative channels. Some migrant workers, nonetheless, resort to disruptive tactics. A migrant who received payment after threatening suicide succinctly stated, “If I don’t do this, how will the government

ever notice my problem?" (Informant A14, Male, Construction Worker).

To make a claim for the owed wages, the migrants usually target the employers and related parties first. It is a common sight that migrant workers would occupy the construction site or the employers' office. A report of the Social Welfare Bureau to the General Office of the Labor Bureau of County Z (2008) listed three such sit-ins in 1 month, all involving the construction business. On January 28, 2008, when one contractor disappeared with funds, 181 workers protested at the construction site. This incident immediately drew the local government's attention. With the involvement of the Social Welfare Bureau, the developer agreed to pay the wages within hours.

Such actions create work stoppages, thus forcing the employer, and sometimes the government to respond. Whether these strategies work or not, however, depends on the employers, who may claim that they lack the cash. Nonetheless, when migrant workers are dissatisfied, their next target may be the owner of the project on which the migrant workers have worked. In December 2008, 80 migrant workers occupied the developer's apartment sales office, after numerous failed attempts to obtain payment from the construction company, which claimed the developer had not delivered the construction fees as promised. The occupation crippled the sales activities because the migrants clashed with the security guards, and told every prospective buyer of the dispute. Eventually the police were summoned, and only after the developer installed a surveillance camera did migrant workers begin to leave (Informants A8–13).

In another case, nine construction workers climbed onto a university gate that was still in the process of being built, because the construction company contracted by the university failed to pay the wages in one project (*People's Net* 2011). Legally speaking, neither the university nor the developer had any relationship with the workers, and thus were not liable for the unpaid wages. Still, it was embarrassing to have a group of migrants claiming back pay at the gate of a university or the sales department of a developer.

When chasing the employer or the related parties is fruitless, local governments become the target. The most dramatic scene occurs, as documented by Su and He (2010), when enterprises failed leaving behind a large number of unpaid workers. The workers take to the streets, blocking traffic and insisting that the local government solve the problem. In other cases, migrant workers stage sit-in outside the office building of the government, holding officials and sometimes employers as hostage (Informants A15–17).

According to the Emergency Responding Office of County Z (2009):

At 9 am on February 4, 2008, around 40 migrant workers, led by their team leaders, went to the Construction Bureau of County Z, to request unpaid wages of 580,000 yuan. The Construction Bureau guided the workers back to the construction site and summoned all relevant parties on the spot to help resolve the dispute. At 3 pm, some migrant workers became emotional, taking the boss of the developer together with them, gathered outside the administration center of the municipal government and blocked all the doors.

These actions are direct, focused, and effective. A government document listing eight incidents between January and February of 2009 indicates that most requests were satisfied within hours, with some exceptions taking 2–3 days. A report of the Emergency Responding Office of County Z (2009) states:

When the protesting workers returned to the Construction Bureau, the officials there immediately notified all the parties involved to come. When migrant workers surrounded the municipal government, the Office Responding to Emergencies, together with the Staffing and Welfare Bureau, Construction Bureau, and the Police actively participated in the dispute resolution.

In the above event, an agreement was reached at 10 pm, in which the construction company delivered 320 thousand yuan (including 150 thousand yuan as deposit) to the labor user company, so the latter can pay the workers immediately. The deal also made it clear that the balance would be settled by the end of the month by the two parties.

A key reason for the effectiveness of these tactics is that collective actions are officially classified as “vicious incidents” (involving death) or “mass incidents” (involving ten people or more), the number of which has become the performance measures of local officials at a time when social stability has become the government’s first priority (Minzner 2009; Su and He 2010). Another reason is that when the government intervenes, employers or developers are generally more willing to provide funds, to placate the government. But it is usually difficult for the migrants to mobilize so as to interfere with the functioning of the government because a large number of migrants are required. This is both difficult and risky: the authorities may round up the organizers

and label the event as “malicious wage claiming” (Xinhua Net 2005).

When none of these tactics are feasible, some aggrieved migrant workers take action against the social order. This may be because only one or just a few migrant workers are involved, making a sizable protest out of the question, or because they face threat or reprisals by employers and thus dare not to confront them.<sup>2</sup> In other words, this tactic is often employed by the most desperate migrant workers. They are willing to risk their lives in the protest. To compensate for their inadequate resources, they must raise the stakes by acting dramatically. As well-documented by news reports (e.g., Pan 2003), the most common form of this type has been the suicide threat: migrant workers perch on roof tops or towering construction cranes, from which they threaten to leap. This does not take much mobilization or organization but this is the last resort.

The effectiveness of this tactic depends on the reactions of the government and the media. These events usually attract public attention. To prevent the incident from escalating and to avoid blame, local governments usually respond quickly. An internal report of the Staffing and Labor Welfare Bureau of County Z in 2008 states,

In the afternoon of December 6, two migrant workers climbed to the construction tower, threatening to commit suicide, to request the user company to pay the delayed wages. Being informed of the incident, the major leaders, with other staff of the Office of Labor Monitoring, immediately arrived at the spot. At the moment when we were persuading, explaining, comforting the workers with louder speakers, we also located the person in charge of the construction site, demanding an immediate liquidation and the materialization of the unpaid wages. Our efforts have successfully resolved the case, preventing a forthcoming bloody incident.

Only a few migrant workers were so lucky because the government does not always act promptly and in their support. Indeed, more often than not the authorities take a tough stance, in part to deter similar events. Some “malicious” migrants were rounded up by the police immediately after getting off the crane. Occasionally a threat

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<sup>2</sup> There are too many such incidents to list here. Indeed, a migrant worker whom we accompanied to claim wages was hospitalized after being beaten by thugs hired by the employer. For examples of this type of news reports, see *China Youth Daily* 2003; 2005; 2007; *Beijing Evening News* 2006.



of suicide is carried out; some migrants have jumped to their deaths (c.f., Xu 2008).

## **Perceived Justice**

### **Blaming the Government**

Since many migrant workers have only vague ideas on the employment relationship, who shall be held responsible is often unclear. That is why the labor brokers or the employer of the migrant's labor service is blamed. When their demands are rejected, migrant workers shift the blame to the suppliers, or to the employer of their work, and eventually to the local government. Some of these parties may not have a formal legal relationship with the migrant workers, and may not know why they have been dragged into this dispute. The migrant workers believe that ultimately their situation is the government's fault. The purpose of disrupting the social order is to draw government attention and intervention, and that is why their actions escalate when ignored.

Although migrant workers know that neither the government nor the officials are responsible for paying them, blaming the government is justifiable for several reasons. As Scott (1990) may put it, there are "hidden transcripts" in resistance. Most of migrant workers interviewed by us believe that the developers are closely related to, if not in collusion with, the local government. As noted by Lee (2007), such relationship has been an open secret at a time when attracting more investment and increasing GDP has been a key criterion for evaluating the performance of local officials. A migrant worker occupying the Construction Bureau offices overnight said to us, "The government officials take kickbacks! You see the TV programs [indicating the widespread corruption] . . . I guarantee that they all take kickbacks" (Informant A9). Seeing many cases of such ties revealed by mass media, migrants tend to hold the officials accountable for their unpaid wages: the close relationship between the officials and employers is the culprit that emboldens the latter to evade payments. As long as officials take kickbacks, the workers believe, they shall also suffer the consequences. Another migrant worker said: "Dare they take the kickbacks; dare they not solve the problem!" (Informant A10).

Migrant interviewees also believe that the government, with its seemingly omnipotent authority and long reach, is in a better position to forge a solution (Informants A19–22). In a collective action 4 days before the 2009 Spring Festival (the 2009 Incident),

50 migrant workers blocked the door of the Wages Clearance Office. The migrant workers took several officials and two representatives of the developer hostage: they requested an immediate delivery of 1.7 million yuan in back pay. When asked why the government should be involved, one migrant worker said, "Only the government can solve this problem through notifying them [the user company]. If the government were not involved, where can we find them? If we cannot even locate them, how can the problem be solved?" (Informant A10). Another migrant worker responded: "For officials, solving the problem is as easy as lip-singing" (Informant A11). A third said, "If we take physical action against the developer, the police will round us up. And the developer does not even answer our phone calls, so the government shall notify them" (Informant A12). A fourth added: "We workers are not even aware of the whereabouts of the user company. We have to chase these guys. No other choice" (Informant A14).

When the officials pressure the responsible parties, the employers and other parties are responsive. After one developer, who under the law was not responsible for the unpaid wages, was obliged to pay 0.8 million yuan in a collective incident, the vice chairman of the developer said to us: "We are invited by the local government to do business here. The government supported our projects enormously during last year. Now that they run into trouble, we cannot just be a spectator. The 0.8 million has no legal basis, but we are willing to pay" (Informant C1).

Being blamed by the migrants is also a result of government rhetoric. The government often paints itself as the people's servant. When the rhetoric does not match the reality, the government is blamed. In the 2009 incident, 14 hours after the office was blocked, some migrant workers started kicking the door of the office. A vice director of the Construction Bureau of County Z coordinating the dispute responded: "Do I owe you the money?" One migrant worker replied: "What officials have said shall count" (Informant A10). Another said: "You officials shall do meaningful work for the masses!" (Informant A11) Another added sarcastically: "We trust the Communist Party, who loves every citizen. The Party's door is forever open to the people [implying that the office's door is now closed]" (Informant A13). Indeed, a national survey suggests that 53.57 percent of surveyed migrant workers believe that their wage plight results from the failure of government regulation (Ai 2007).

The belief that the government is omnipotent also contributes to the blaming. Migrants are unclear about, and do not want to know, the separation of powers in the government. When government officials dodge the problem and ask the migrant workers

to file lawsuits, migrant workers often insist on holding the government officials responsible. In a collective incident, one official explained to the workers, “No matter whether you want to sell the developer’s building, or file a lawsuit against it, you have to follow the procedures. Don’t you know that the power of the government is exercised through the court?” (Informant B11). Migrant workers responded, “If we go to court, then what is the labor bureau set up for? We want to the Wages Clearance Office and the Labor Bureau here to solve our problem!” (Informant A6). One migrant said: “Last year in Henan Province, our boss disappeared, but the government there paid us” (Informant A5).

### **What Constitutes Evidence?**

One crucial divergence between migrant workers’ perception of justice and the state’s version is what constitutes evidence. While the formal legal system has clear evidence rules, migrant workers do not even have a written employment contract. They instead would take their finished work as sufficient evidence. Whenever the government officials dodge the request of migrant workers with the evidence requirement, they are impatiently rebuked. The following conversation is illustrative:<sup>3</sup>

Official: “Why did not you follow the law in the first place? How can you start work without a contract? Now that you claim they owe you the wage, what is the evidence?”

Migrant worker 1: “We workers only know the place to work is the place to be paid.”

Migrant worker 2: “We do not care about contracts! We only know we have built the apartments, so we are asking for the wages!”

Migrant worker 3 said: “Evidence? Then we will flatten the construction site! You are asking for evidence! Do not you see the whole building standing there? We have worked, and our work is the evidence. Who are you speaking for?”

Migrant worker 4 said: “The fact that we have come to your office for help is self-evident. Otherwise why are we here?!”

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<sup>3</sup> All of the following statements were excerpts from the conversations between migrant workers and government officials, as observed in our fieldwork.

Officials did not automatically dismiss the unsophisticated understanding of evidence. We observed that the government officials did not always check the identification of migrant workers who complained at the labor bureau. Sometimes the officials did not even know migrants' names after the disputes were resolved. From their previous working experience, officials seemed to take the migrants at their word (Informant B2). In other words, migrants' conception of evidence, which is closely related to the Chinese culture that one gets paid after completing work, is partially validated and is thus reinforced by the officials.

This conception of evidence is so ingrained among migrants that even the courts have to make compromises to resolve the disputes. The courts certainly have stricter requirements for evidence, but they have to loosen the requirement for the migrants. Su and He (2010) find that in Guangdong, the courts dispensed procedural and evidence rules so as to render decisions favorable to migrants. A district judge who has processed a large number of labor disputes in Beijing said (c.f. Halegua 2008: 310):

These migrant workers come to court with no evidence at all: they have no labor contract, often just a sheet with their name and a check mark next to it, indicating they went to work on a certain day. Sometimes their only proof of having worked at a place or how much the boss promised to pay them is the testimony of the other workers, also co-defendants in the case . . . I estimate that, if these cases were strictly decided and tried in the same way as other civil cases, then 90 percent of the workers would lose. In practice though, they win in about 50 percent of cases. We cannot only consider the law, we also need to consider social stability—especially if it is a collective case . . . involving over 10 workers. Also, there are government policies (zhengce) calling for us to support migrant workers, especially right before the Spring Festival.

### **When Shall They Be Paid?**

Although the Labor Law stipulates that the payment shall be currency denominated and delivered monthly (Art. 50), interviewed migrant workers will accept late payments and are accustomed to being paid after the entire project is over (Informants A21–22). During the working period that may stretch for months, they simply advance food or living costs only, which amounts to around 10 percent of the wages (Pun, Lu, & Zhang 2010: 131). Paying lump sum at end of the project seems to be customary.

According to the Labor Law, labor arbitration must be initiated within 60 days of dispute (Art. 82). But the statute of limitation is an exotic concept to most migrant workers. More importantly, since the workers are willing to wait for a lump sum payment, it is unfair for the employer or the formal legal channel to deny payment. Migrant workers feel that they are subject to double standards when statute of limitation is invoked. The migrant workers' conception of justice cannot accommodate such a legalistic term.

Indeed, migrant workers do not resort to disruptive actions until they are desperate. Most of them would be patient even if the developer or the user company delays the payment after the completion of the work because it is short of cash. By the eve of the Spring Festival, the workers would lose patience. Our interviews with officials find that in this period the number of collective actions resulting from unpaid wages skyrocketed (Informants B1-5). This is because migrant workers have to go home to their families, usually after a year away. Their children need money for school, and elderly parents need medical care and wives need new clothes. As in the ballad "It is Them Who Owe Me," it is unthinkable to go home empty-handed.

This timing has significant implications for the government's responses to disruptive actions. By the year's end, government officials have to react promptly to wage-related collective actions, given the urgent need of the migrants. They do not have the luxury to behave like bureaucrats following the entrenched procedures. Rather, they act like firefighters or combat soldiers. Once the fact that the workers have indeed worked for the project has been ascertained, officials urge the employers to pay within days, if not hours (Informants B1-5). The following telephone conversation between the director of the Construction Bureau and Boss Lin illustrates the urgency when more than 30 migrant workers stormed the office of the Construction Bureau on the eve of the 2009 Spring Festival:

Have you located any funding? We have not had dinner yet [because the venue was blocked by the migrant workers]! It is not that we do not understand you! Meanwhile the workers are here and become very agitated . . . There is a priority problem: they are from the area hard hit by the [2008 Sichuan] earthquake, they are living in a shed, women and their kids are waiting for some meat for the Festival! The developer has already located part of the funding; you shall do your part. . . . The payments for the construction materials are not the first priority; the unpaid wages are the most important! They have wives and kids to take care of. My voice has become raucous calling people. I command you,

even if you are surrounded by the mafia, you must immediately call some colleagues to locate some funding, at least 400k! (Informant B9)

He then hung up on Boss Lin.

One official cast serious doubt on the formal legal channel:

Following the legislated procedure cannot solve these problems. Tens of unpaid migrant workers are staying at office. What do you do? Who pays their lunch boxes today? These are questions that need imminent solutions. It could take years if we follow the normal procedure, notifying the companies through written documents, asking them to be consulted by appointment, and making changes according to our suggestions! (Informant B10)

### **How Much Shall Be Paid?**

Although the amount in dispute is clear in regular legal disputes, the exact amount of wage arrears is not. In practice, migrant workers usually agree upon a lump sum salary with their team leader (or the broker). The lump sum excludes fringe benefits specified by the labor laws. The situation becomes complicated when the team leader does not receive the payment for his team from the user. In other words, the team leader himself could fall victim to the situation (Informant C5). As a result, getting money from the top of the food chain becomes the precondition for paying individual migrant workers. The original deal between the team leader and migrant workers is thus subject to change. Indeed, with a native place and blood ties with the team leader, migrant workers are more of the ally than the enemy of the team leader; at the same time, the team leader needs to pay his team in order to maintain authority. The migrant workers thus cannot just chase the team leader for payment; they have to consider whether the leader was paid and in most situations, ensure that the leader is paid.

The situation becomes worse when the unpaid wages are used as leverage in the negotiations among the supplier, developer, and the construction company. For instance, when the construction company does not receive payments from the developer, it may refuse to pay the wages but blame the developer. Indeed, the construction company may even encourage, if not mobilize the migrant workers, to use disruptive actions as a means of exerting pressures on the developer. It is not unheard of for gangs of hooligans to be hired to participate in disruptive actions. That is why the Beijing municipality (*Xinhua Net* 2005) has passed laws punishing malicious wage claiming. In one collective protest, the vice director of the construction bureau of County Z repeatedly

asked if the team head really knew every participant (Informant B9). Under this circumstance, the amount of pay recovered would hinge on the interactions among all these parties.

### **How Perceptions Are Reinforced**

Migrant workers' understanding of justice, however, will not sustain if such disruptive tactics get them nothing. For instance, their perceptions that the government is culpable and can help obtain payments were validated, as least in part, by the response of officials or judges. The Wives Claiming Wages Incident (Jiang 2007), for example, quickly attracted nationwide media attention and with that came a resolution forged by multiple government agencies along with the employer at issue. In our fieldwork, we followed a wage dispute led by a migrant worker named Chen Ming (Informant A10). In the course of about 3 months, we watched the case shifted course from one target to another, from one approach to another, from polite appeals to radical confrontations. The turning point for the wage claimants came when a group of angry workers smashed the door of the county's Stability Maintenance Office and rushed inside to sit in. The tumult that afternoon brought as many of nine county leaders from assorted government agencies, the police station and the court, to appear, including a vice party secretary and vice major. The company was ordered to pay the amount that was close to what the Chen Ming group asked for.

If the last section concerns the force that pushes migrant workers away from the formal legal channel, this section is about the "pull" factor that attracts them to disruptive actions. The government's reactions ironically often reinforce their perception. To understand this point, one only needs to see how nationwide laws and policies are enforced at the local level.

All these disruptive actions and the sadness that they reveal have not gone unnoticed by the central government. After Premier Wen Jiabao made efforts to collect unpaid wages for a peasant (*CCTV International* 2003), the central government has introduced numerous measures to help migrant workers get paid. For example, arbitration fees for migrant workers suffering economic difficulties are exempted, a debt-clearance office at the Construction Bureau has been set up, and arbitration and adjudication processes have been simplified. These changes have led some scholars to assert that migrant workers' grievances have been addressed (Croucher & Miles 2010).

The real situation, as we discovered in County Z and other grassroots jurisdictions, is less clear-cut. In addition to the gap



between the law on the books and law in action, local governments have their own concerns. These governments do not want disruptive actions, which are troublesome and sometimes even dangerous. Moreover, the number of mass incidents is an important criterion by which to evaluate local officials' performance. In the current economic, legal, and labor environment, however, they are impossible to avoid. Local economic development remains a priority for local governments and officials. At a time when investments remain the driving forces of economic development, the confluence between economic interests and local politics seems inevitable: as the local governments expect a rapidly rising GDP, the business elite reaps the profits from cheap labor. The behavior of local officials has thus been heavily influenced by the need of the business sector.

In a way, local governments have been quite responsive to such disruptive actions and have been effective in helping deliver, mostly partial, payments. All arms of administrative branches, or in the words of Su and He (2010), a boundary spanning court, are involved in pacifying the disruptive actions and resolving disputes. They are responsive rather than repressive not just because the officials sympathize with migrant workers, but also because they have to appease aggrieved workers for the sake of "stability politics" (Su & He 2010). Any mishandling of those incidents will put their political career at risk. At the same time, if local governments keep rewarding disruptive tactics, they tacitly encourage them. It is not surprising that some local governments have rounded up migrants for "violating social orders" or for "malicious wages claiming." Sticks and carrots are simultaneously employed in the so-called balanced strategy.

When a disruptive action erupts, government officials usually pressure developers and other business entities to pay the workers what they are owed. Once a portion of the requested amount is paid, the officials persuade the migrant workers to be satisfied with what they have been given (Informants B10–11). The following words of negotiation officials are telling (Informants B4, B5 and B8):

"Please take this portion now, and come back for the rest later."

"You know, in many places the migrant workers can only get the traveling expenses, you are much better already."

"The final liquidation has not yet to be finished. We the construction bureau will make sure that they pay you then."

In another incident in which the officials located 60 percent of the requested amount, the official in charge said bluntly (Informant B14),

“Various branches of the government have already tried their best, and this is it. For the rest, you may go to the courts, and our government will provide you with all the legal aid.”

“This is a market economy, in which the government cannot have all things taken care of. After all, we [the Construction Bureau] are not a law enforcement agency for many issues; we are not vested with authority to freeze or auction the property of others [developers or employers]. This power belongs only to the court, police and procuracy.”

In a negotiation immediately before the Spring Festival of 2009 between more than 100 migrants and the government, the director of the Construction Bureau of County Z announced (Informant B9),

Migrant worker comrades! The government must work for the people, but under the market economy, the government is not omnipotent. For problems unsolvable by the market, a legal path is inevitable, which means lawsuits . . . To get onto this path, as we discussed before, Longyang township government’s Labor Department and Justice Department, including all Justice Departments in County Z, will unconditionally provide legal aids to you for free, absolutely.

In most situations, migrant workers take this partial payment and end their protest. In the collective incident involving 586,000 yuan in unpaid wages, the government and migrant workers reached the following agreements:

(1) The developer promises to lend 350,000 yuan to the labor user company and migrant workers receive what they are owed multiplying 350/586 within a week; (2) the labor user company will be taken to judicial proceedings; (3) The Office of Labor Monitoring, the Construction Bureau, the Police will hold relevant personnel of the labor user company liable and facilitate the realization of unpaid wages by administrative means. (Menyang Township Government 2009)

Nonetheless, to pacify the conflicts is the ultimate goal. An official said to us: “Social stability is the first priority. As long as the disruptive actions are terminated, we are satisfied. Whether or not they will take the disputes to court later on is not important” (Informant B1). Of course officials are also clear that once the migrant workers have left, it is difficult for them to be mobilized

again, since most of them will immediately go home (Informants B1-5).

As a result, not many requests for payment in disruptive actions were fully satisfied. Our interviews with both the officials and migrants suggest that in most situations they only received 50 to 70 percent of the requested amount. Many migrants were certainly unhappy about the result, especially when they witnessed the weak responses of the officials to the businessmen. Partial payment is better than nothing, and they do need to take the money home for the Spring Festival. The temporary solution or the partial payment thus becomes the settlement.

Whatever the rationale of the governments, for migrant workers, the outcome is both painful and encouraging. As found by Su and He (2010), the *ad hoc* treatment of the government toward labor protest is effective and conciliatory. Although the payments are not full and always depend on the availability of funding, they are immediately delivered. This is very important because migrant workers cannot wait. This timely delivery distinguishes the administrative remedies from the judicial one. This relatively positive outcome, though far from perfect, does encourage more migrant workers to choose the administrative over the judicial channel. "This arrangement is, at best, a temporary cure for a serious problem" (Su & He 2010: 169).

But just like the local governments, migrant workers have to walk a fine line. They are also aware of the bottom line of the governments. On the one hand, they take care to limit the disruptiveness of their actions in order to avoid getting into trouble with the authorities. As the most deprived segment of society, they do not have many resources to deploy. Occasional innovations in their disruptive tactics only reveal their desperation and slim political opportunities. On the other hand, the governments also employ extra-legal methods as a short-term expedient. Legal aids, when invoked, sound more like a threat to than an invitation. Consequently, the law has become less relevant.

Migrant workers, business elite and local governments thus reach a subtle equilibrium. At the end of the day, extra legal means become the routine and one could not care less about the formal legal channel. For both the governments and migrant workers, their tactics or strategies are determined by the social structure in which they are embedded. As a result, migrants' reasons for blaming the local governments, their unsophisticated understanding of evidence and social justice, and their discounted claims for compensations are reinforced.

## Discussion and Conclusion

The disruptive actions taken by migrant workers in China, in many aspects, are similar to “disturbance” as described by Ewick and Silbey (1998: 204–13). Dressing as Spiderman (*Yangcheng Evening News* 2010) resembles “masquerade,” a form of disturbance by Ewick and Silbey’s (1998) informants. To attract higher ranking officials’ attention, Chinese migrant workers file administrative petitions or organize collective actions. This is not unlike “inversion” (Ewick & Silbey 1998: 209–13). Sitting in government buildings or construction sites recall the acts of “taking space” (Ewick & Silbey 1998: 217–19). Similar to disturbance, disruptive tactics generally do not overstep into the illegal turf, which may trigger severe repression of the state. They are strategic, trying to make the employer or the government look bad, and arousing public sympathy.

But disruptive tactics are more aggressive, noisier, more desperate, *ad hoc*, and temporary than disturbances. While the resistance in the United States is mild, the tactics adopted by migrant workers in China are aggressive and even violent: individual and private resistance is escalated into collective and public actions. They also differ in terms of goals. Disruptive actions are pragmatic instead of symbolic: migrant workers in China need to have their problems solved. They are not satisfied with “narrating social structure” (Ewick & Silbey 2003); they want to be paid immediately. Subsequently, in migrant workers’ account, law is not only condemned, but needs to be confronted, defeated, and debated. For them, “might does not make right.” In other words, unlike the America’s downtrodden class described by Ewick and Silbey (2003) who wage passive and private resistance “against the law,” Chinese workers stage disruptive acts that are not only proactive and goal oriented, but also public.

Similar to the injured victims in Thailand (Engel 2005; Engel & Engel 2010), Chinese workers were convinced of the righteousness of their cause, but the details of legal proceedings for redress were beyond their grip. They found themselves beneath the law. This perception of justice shall be understood in both the cultural and structural context in which this particular social group in China is located.

### The Cultural Perception of Justice

In the Chinese case, wage claimants often have a strong case in the court of public opinion. That a simple wage dispute takes a long and tedious process reveals the problem of the system, not the workers’ lack of familiarity with the legal system. In other words,

Chinese wage claimants may not know whether or not they have a strong legal case, or if they can afford one, but they do consider themselves to possess a strong cultural case. Hence, they appeal to the court of public opinion. Unlike the situation in the United States in which procedural justice plays a significant role (Tyler 1990), the Chinese have long believed that substantive justice trumps procedural fairness (Michelson & Read 2011: 197). It is with this belief of righteousness that is deeply ingrained in Chinese culture that migrant workers, as disadvantaged as they are, dare to stage such disruptive actions.

Focusing on the “moral universe” of migrant workers who follow different routes in collecting unpaid wages, Thireau and Hua (2003) find that those who file complaints with the arbitration tend to frame the grievance as specific and individual, so as to meet legal standards, whereas those who file petitions with the Letters and Visits Office tend to stress a wrongful situation. The former requires working knowledge and the latter conceive a sense of justice that is not necessarily designated by the law. In our case, we find that the generalized sense of justice as documented in Thireau and Hua (2003) is the guiding force for the wage disputants. As wage claimants, they find their sense of justice in this particular issue—wage payment—is incongruent with the law. For them, to be able to obtain one’s pay after work is as simple a rule as the sun rising from the east. Any formal procedures, such as signing a contract beforehand and presenting court evidence in the dispute, that are supposed to help this justice be delivered, seem to be overcomplicating the matter at best and designed to deceive, to intimidate and to bully at worst.

Although migrant workers know that they have been wronged, this realization may have little to do with the law. In fact, in the evolution from their “perceived injurious experience” or “naming,” to the articulation of whom to blame (blaming), to taking action to seek redress (claiming) (Felstiner, Abel, & Sarat 1980–1981), almost all of these aspects are incongruent with the law. Unlike naming, which is obvious for unpaid migrant workers, blaming is mutative. In other words, migrant workers’ understanding of law is progressing as they start doing something about the wrong that was done to them. They usually come to the Office of Labor Monitoring, an informal administrative channel, the process of which informs and reinforces their perception of justice. Somewhere in the middle of this journey, they are at the crossroads of the formal legal channel and disruptive tactics. That their versions of justice differ from, or fail to meet the demand of, the law, they are left no recourse rather than protest or acts of desperation. “The dispute that ends up in court . . . has been, necessarily, translated

from raw, lay norms and descriptions, into legal categories” (Friedman 1989: 21). It is the failure of such translation that gives rise to the disruptive routes of conflict resolution as opposed to the formal legal channel.

How does the perception of justice inform the process in the journey, or the lack thereof, in such a translation? Our discussion follows two dimensions: the basic precepts of social justice, and the working knowledge of the legal system. The former refers to a commonsense and deeply ingrained principle in Chinese culture: one gets paid for one’s work. As a migrant worker said to us, “I must get my wages paid. No one can deny the right. I deserve the wages even if the project that I work for does not make money. This right [of getting paid] will be recognized in any society, and we can always find people who support us [on this]” (Informant A10). This belief appears to be self-evident and impatient with any embellishment word twisting or sugarcoating.

The latter consists of a series of steps of awareness of how a seemingly simple matter is processed through the formal legal channel. This channel appears to be arcane, if not intimidating, or even conspiratorially vicious. As our discussion unfolds, it is clear that these two dimensions are not congruent with each other, as the initial attempt at redress fails to produce a prompt resolution of salary claims. This incompatibility and contradiction compels some migrant workers to take disruptive actions.

### **Structural Conditions**

As many have argued, legality is embedded and shaped by social structure or contexts (Marshall & Barclay 2003: 622; McCann 1999: 240). Recent studies have placed legal consciousness in an organizational and institutional context (Hoffmann 2003). Specifically, by situating legal consciousness across different groups, Nielsen (2000: 1087) argues that “the social location of subjects, and the experiences that arise from that location, are a vital part of our understanding of legal consciousness.” According to Engel and Engel (2010: 128), justice among Thais is defined with reference to broader patterns of social inequality. In China, where social inequality is rampant and the formal legal system is dauntingly inaccessible (Fu 2009; Ho 2009; Lee 2007; Su & He 2010), people’s view of the law differs markedly (He 2005; c.f. Santos 1977). This group of migrant workers’ perception of justice is shaped by their disadvantaged status vis-à-vis the political and business elite. They believe that their work shall be paid, but no one can be held to account. With the formal institutional channels either inaccessible or incompetent, some of them are left with no alternative to disruptive actions. They believe all the

parties they are dealing with are connected and should be collectively held responsible, so they blame the government, whose rhetoric professes to care about workers. By the same token, their perception of the timing of payment is related to their inferior position in the relationship with their employers. With little leverage, they have to accept delayed payments, until the eve of the Spring Festival. Similarly, their perception of evidence is due largely to the fact that they do not have a formal and written employment contract with the user company. At the outset of employment, workers were so grateful for the precious job opportunity that they dare not to request that their connections, who often double as team leaders, sign a written contract. Likewise, their view on the amount of wages is formed also because of their disadvantaged position. The balanced strategy of the government and the collusion between the government and business force them to accept a partial payment.

At the same time, the *ad hoc* practice of the governmental action rewards disruptive tactics by settling wage disputes. This is explained as a court with spanning boundaries, with other government branches serving as *de facto* courts (Su & He 2010). But unlike most courts which require formal petitions, due process, and formal adjudication, this *ad hoc* court hastily “hears” cases often on the street, in favor of the workers who are able to make largest disruption possible. This feature of the governmental reaction reinforces the perception of the law and the practice of disruptive tactics. Unlike the deprived women in Hawaii studied by Merry (2005) where rights talks have been able to encourage more use of laws, migrants here receive little support. Their perceptions of law are reproduced and reinforced by the operation of political and legal power and social structure.

This study presents “the common place of the law” in an early stage of the legal development toward rule of law. We explore social and cultural conditions under which the law is perceived. This analysis point to a lesson for legal reforms that aim at protecting the downtrodden: while law making is important, accessibility to the law is equally, if not more so. The project of legal development should consist of not only formal procedure and legal institution, but also social and political reforms to go with them.

## **Appendix: List of Informants**

A list of the real names of the following informants is available in the authors’ possession.



*A. Migrant Worker (22)*

- A1. Female, 30, worker in a furniture store, seeking unpaid salary, interviewed in 2010.
- A2. Male, from County Z. Coming to the county government to register complaints, later joining street protest; first interviewed in 2009.
- A3. Male, bricklayer, from County Z. Coming to township government to register complaints, later joining street protest; first interviewed in 2009.
- A4. Male, concrete mixer, from Dujiangyan Municipality, Sichuan. Coming to township government to register complaints, later joining street protest; first interviewed in 2009.
- A5. Male, bricklayer, from County Z. Coming to township government to register complaints, later joining street protest; first interviewed in 2009.
- A6. Male, carpenter, from County Z. Coming the county government building to register complaints, later joining street protest; first interviewed in 2009.
- A7. Male, bricklayer, from County Z. Coming to the County's Construction Bureau to register complaints, later joining street protest; first interviewed in 2009.
- A8. Male, electrician, from Hechuan City, Chongqing. Coming to the County's Construction Bureau to register complaints, later joining street protest; first interviewed in 2009.
- A9. Male, electrician, from Hechuan City, Chongqing. Coming to the County's Construction Bureau to register complaints, later joining street protest; first interviewed in 2009.
- A10. Male, electrician, from Hechuan City, Chongqing. Coming to the County's Construction Bureau to register complaints, later joining street protest; first interviewed in 2009.
- A11. Male, electrician, from Hechuan City, Chongqing. Coming to the County's Construction Bureau to register complaints, later joining street protest; first interviewed in 2009.
- A12. Male, electrician, from Hechuan City, Chongqing. Coming to the County's Construction Bureau to register complaints; later joining street protest; first interviewed in 2009.
- A13. Male, electrician, from Hechuan City, Chongqing. Coming to the County's Construction Bureau to register complaints, later joining street protest; first interviewed in 2009.

- A14. Male, construction worker, from County Z. Coming to the County's Construction Bureau to register complaints, later joining street protest; first interviewed in 2010.
- A15. Male, construction worker, from Santai County, Sichuan. Coming to Labor Bureau of Kuche County to register complaints, later joining street protest. First interviewed in 2009 at Santai County.
- A16. Male, construction worker, from Santai County, Sichuan. Coming to Labor Bureau of Kuche County to register complaints, later joining street protest. First interviewed in 2009 at Santai County.
- A17. Male, construction worker, from Santai County, Sichuan. Coming to Labor Bureau of Kuche County to register complaints, later joining street protest. First interviewed in 2009 at Santai County.
- A18. Male, from outside County Z, first interviewed in 2010.
- A19. Male, team leader of carpentry workers, from County Z. Coming to the County's Construction Bureau to register complaints, later joining street actions. First interviewed in 2009.
- A20. Male, team leader of carpentry workers, from County Z. Coming to the government of Mengyang Township, County Z, to register complaints, later joining street actions. First interviewed in 2009 inside the township government building.
- A21. Male, team leader of bricklayers, from County Z. Coming to the county's Construction Bureau to register complaints, later joining street actions. First interviewed in 2009 at the Bureau building.
- A22. Male, team leader of bricklayers, from County Z. Coming to the county's Construction Bureau to register complaints, later joining street actions. First interviewed in 2009 at Bureau building.

*B. Government Official (16)*

- B1. Male, vice director of County Z's Labor Bureau, interviewed in his office for multiple times, 2009–2010.
- B2. Male, official of County Z's Office Labor Monitoring, a branch of the Labor Bureau, in charge of processing and mediating labor disputes, interviewed in 2010.
- B3. Male, official of County Z's Office Labor Monitoring, a branch of the Labor Bureau, in charge of processing and mediating labor disputes, interviewed in 2010.
- B4. Male, official of County Z's Office Labor Monitoring, a branch of the Labor Bureau, in charge of processing and mediating labor disputes, interviewed in 2010.

- B5. Male, official of County Z's Office Labor Monitoring, a branch of the Labor Bureau, in charge of processing and mediating labor disputes, interviewed in 2010.
  - B6. Male, official of County Z's Office Labor Monitoring, a branch of the Labor Bureau, in charge of processing and mediating labor disputes, interviewed in 2010.
  - B7. Male, official of County Z's Office Labor Monitoring, a branch of the Labor Bureau, in charge of processing and mediating labor disputes, interviewed in 2010.
  - B8. Male, official of Mengyang Township, County Z, interviewed in 2009.
  - B9. Male, official of County Z's Construction Bureau, in charge of "Office of Clearance of Unpaid Wages," interviewed in 2009.
  - B10. Male, official of County Z's Construction Bureau, working in "Office of Clearance of Unpaid Wages", interviewed in 2009.
  - B11. Male, official of County Z's Construction Bureau, working in "Office of Clearance of Unpaid Wages", interviewed in 2009.
  - B12. Male, official of County Z's Office Labor Monitoring, a branch of the Labor Bureau, in charge of processing and mediating labor disputes, interviewed in 2010.
  - B13. Female, judge, the civil division head of a county court, interviewed in 2010.
  - B14. Male, official of "Office of Clearance of Unpaid Wages," interviewed in 2010.
  - B15. Male, official of County Z's Construction Bureau, interviewed in 2010.
  - B16. Male, official of County Z's Construction Bureau, interviewed in 2010.
- C. *Middleman, Manager, Lawyer (5)*
- C1. Male, manager of a construction company, interviewed in 2010.
  - C2. Male, lawyer, interviewed in 2010.
  - C3. Female, middle-woman, interviewed in 2010.
  - C4. Male, floor manager of a construction company, interviewed in 2010.
  - C5. Male, middleman, interviewed in 2009.

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