THOUGHTS ON CHINA’S INEQUALITY

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I. INTRODUCTION

Since the economic reforms of 1978, China has expanded in wealth and production to become the world’s second largest economy. In terms of speed and scale, her development is staggering. China’s economy has been expanding an average 9 percent per annum since the reform.\(^2\) Substantial economic growth began in the early 1980s and then developed into the longest period of sustained economic growth in modern times. Today, China’s GDP represents 13 percent of global output.\(^3\) China has also become increasingly integrated with the global capitalist economy. It is now history’s greatest exporter and is flooding the global market with TVs, microwave ovens, computer equipment, cameras, shoes, toys and so on, earning China the moniker of the “sweatshop” of the world.

The relentless changes sweeping over China touch every aspect of its social life as well: the changes in China’s economy are simultaneously transforming China’s culture, politics, and legal system. For example, there has been a shift from socialism to a market economy,\(^4\) the notion of self and community has been altered, and property rights went through dramatic changes. More generally, existing structures and values were increasingly called into question.

One result of these changes is that the relationship between haves and have-nots has become explosive. While there have been dramatic improvements in the living standards of the Chinese people during past thirty years, wealth and power remain concentrated in only a small group of people. China’s Gini co-efficient, an indicator of income disparity, reached 0.53 in 2004, a level far higher than merely dangerous.\(^5\) Resentment between different social-economic groups is deepening.

This paper explores the inequality in Chinese society. It first provides some current examples, focusing on the post-reform situations of the rural migrant workers and the laid-off urban factory workers. It then argues that, although China's dramatic economic growth has exacerbated social inequality, the roots of

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1 Research Assistant Professor, Hong Kong University, School of Law. I am especially grateful to Tawen Chang who helped me greatly in the whole writing process.
3 Id.
4 Although China remains a Communist country in rhetoric, its practices have become more and more like those of a capitalist economy. China’s government claims that it is building a “socialist market economy.” Yet capitalist practices permeate Chinese economy. Capital accumulation, productive investment, the use of capital and machinery to exploit labor, and de-collectivization of land and other productive resources all make China socialist only in a formal legal sense.
inequality goes further back, to Chinese intellectuals’ adoption of Social Darwinism during the Qing Dynasty. Finally, the paper turns to how reforms since 1978 have exacerbated the inequality already present in Chinese society.

II. LIVING AT THE EDGES OF CHINESE SOCIETY: THE PLIGHT OF MIGRANT RURAL WORKERS AND URBAN LAID-OFF WORKERS

China today is experiencing social inequality on a massive scale and in extreme forms that is historically unprecedented. In terms of the numbers of people affected in a relatively short period of time, China has undergone the most massive and intensive process of social polarization in world history. Those newly rich from China’s dramatic economic growth engage in gluttonous consumption. They wear expensive watches, drive imported cars and live in upscale houses. The wealthy compete with one another in displays of “conspicuous consumption.” The competition goes on in a great variety of areas—designer bags, expensive watches, overseas tourism, recreation styles, cars and houses. Nothing is off-limits or beyond the reach of commodification. The egregious flaunting of material wealth is nothing short of astonishing.

But “magnificence rooted in squalor” has also become commonplace in China. Expensive hotels are everywhere in large cities, from Guangzhou to Beijing. At the same time, however, more and more beggars and prostitutes walk the streets. Owners and managers park their luxury cars outside their sweatshop factories, where young women labor thirteen hours a day making clothing for a monthly wage of USD 100.

Two groups that form the backbone of China’s “socialist market economy” have become major victims of the economic reforms. They are the rural migrant workers and the urban laid-off workers. In the remainder of this section I discuss how privatization of land and the “smashing” of the “iron rice bowl” during the reforms have led to the creation of these two groups living on the margins of Chinese society.

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7 BARRINGTON MOORE, SOCIAL ORIGINS OF DICTATORSHIP AND DEMOCRACY 320 (1967).
8 “Iron rice bowl” (铁饭碗) is a Chinese term used to refer to an occupation with guaranteed job security, as well as steady income and benefits. Traditionally, people considered to have iron rice bowls in China included military personnel, members of the civil service, and, through the mechanism of the work unit, employees of various state-run enterprises.
A. Migrant Rural Workers after Land Privatization

China’s economic reforms began in the countryside following the 1978 Third Plenum. Collective agriculture itself was seen as the major barrier to greater production and economic growth. The reformers proposed that the main problem in Chinese society was the gap between the country’s “advanced socialist system” and its “backward productive forces.” Thus, initial economic reforms focused on developing China’s productive forces so that economic development could match the stage of social development. The reformers argued that what was needed was to liberate the productive forces, which called for de-collectivizing agricultural production and transforming social relations in the rural areas. Collective farming was replaced by a new system of “Household Responsibility System” (HRS).

Under this new system, individual households contracted with the old production collective for private use of the collective’s land. In return, households agreed to pay a part of their outputs to meet state tax and sales quota obligations. After this, however, households were allowed to sell the rest of what they produced on the open market. Although the land legally remained collective property, a peasant household now had enormous freedom to dispose of what the land produces. This incentive system is intended to stimulate peasant initiative to increase productivity. Theoretically, the land remained collective property. However, since contracted land can be rented, bought, sold, mortgaged, and inherited by individual households, and became de facto private property.

With increasing commercial production and the demise of collectivization, fewer people were needed to work on farms. The result was a huge labor surplus in the countryside. These surplus farmer peasants roamed the countryside and were called youmin. It was estimated that nearly 200 million rural dwellers, about half of the total rural workforce, have been rendered redundant, unable to subsist on the land. The decreasing amount of arable land in China also added to youmin ranks in recent history.

Since HRS brought an end to the rural commune system established during the Mao Zedong era, youmin were freed to leave the countryside to make a living in the cities. Tens of millions left farming to work in factories, transforming themselves into wage laborers. They have been called liudong renkou, or “the floating population.” Since 1979, as many as 225 million peasants have flocked to China’s cities and become wage laborers. In 2003, the number of rural migrant

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9 This formula was first stated by Deng Xiao Ping in 1956. See RESOLUTION OF THE EIGHTH NATIONAL CONGRESS OF THE COMMUNIST PARTY OF CHINA ON THE POLITICAL REPORT OF THE CENTRAL COMMITTEE (1956).
10 Meisner, supra note 6, at 227.
11 Id. at 231.
12 Id. at 233.
laborers reached 114 million, accounting for around 10 percent of China’s total population. By 2020, it is estimated that another 150 million rural laborers will join the rural labor migration, taking the urban population up to nearly 1 billion people. In medium and large cities, about half of the population will be migrants.

In terms of scale, rural migration in China today is unprecedented in history. All previous “great migrations” seem insignificant in comparison. In 1998 alone, some 27 million rural migrants made their way to China’s cities, a number equal to the total number of emigrants from Europe to the United States over the 100-year period from 1832 to 1930, the peak decades of European emigration to America. The millions of men and women from the countryside who flocked to the cities are the backbone of China’s economic growth. With economic development, cities faced a serious labor shortage. Migrant workers provide a steady supply of labor for the booming economy. They perform society’s most menial and unpleasant work, laboring as maids, peddlers, janitors, street sweepers, and so forth. Men from rural villages construct malls, skyscrapers and highways, while millions of young migrant women work in food service and retail trades or find jobs in factories, where they cut, sew and assemble all the low-priced consumer products flooding world markets.

Nevertheless, the wages paid to this new workforce are shockingly low: It is the gap between the low cost of labor and the high value of production that yields the enormous surplus that is the secret of China’s wealth. The exploitation rate in China is enormously high. “The minimum wage level in Guangdong is 574 yuan a month. ‘A lunchbox costs about 12 yuan. With the salary we are getting, we can hardly feed ourselves,’ One worker said during an incident of protest.” In September 2004, the central government found that China’s construction workers were owed approximately USD 43 billion in unpaid back wages. Some laborers had not been paid in years; in debt to their employers and living on the promise of payment, they had essentially become slaves. In the eyes of Chinese capitalists, migrant rural workers are the ideal subjects to be exploited, because there is always a pool of unemployed farm workers willing to replace existing workers. The intensive exploitation is the distinctive capitalist feature in China’s economic reform.

Not only do the laborers receive low wages, their working and living conditions are miserable. Migrant workers often stay in crowded and unhygienic factory dormitories. “The extremely long hours of work are common in all types

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14 Id.
15 Id.
16 Campanella, supra note 2, at 20.
18 Jim Yardley, In a Tidal Wave, Chin’s Masses Pour From Farm to City, NEW YORK TIMES, Sept. 12, 2004; See also Campanella, supra note 2, at 184.
of Chinese enterprises: Workdays of 10-16 hours, six days a week, are not unusual.\textsuperscript{19} Safety regulations for workplaces are minimal. Routine exposures to chemicals and noise lasting up to 60-80 hours a week are frequently reported.\textsuperscript{20}

The situation can be hazardous. The lack of safety precautions such as machine guarding, electrical safety and fire prevention has resulted in many thousands of deaths annually in industrial accidents and fires.\textsuperscript{21} In a factory in Ningbo City, thirty workers within one year had their fingers, hands, or arms chopped off. The factory had drawn up a compensation “price” list: for death or both hands chopped off—Y15,000 (USD 2100); per thumb —Y3000; one finger —Y750. In a cutlery factory in Xiamen, Fujian, which employed 600 workers, 142 workers were maimed over a period of four years. Mining is the most dangerous work; as many as 10,000 miners are killed a year in explosions, roof falls and floods.\textsuperscript{22} For many managers, it makes more sense to pay for individual injuries as they occur rather than to pay the cost of installing safeguards throughout the workplace, because the compensations for injury are so low and because local governments do not want to implement safety regulations.\textsuperscript{23}

In short, although the migrant workers turn the gears of China’s economic engine, their hard work is unappreciated. Furthermore, there is strong discrimination against migrant workers, which leaves them in an even more vulnerable position. The lack of proper Hukou (household registration)\textsuperscript{24} status deprives migrants of a range of entitlements available to the local resident population. Thus, migrant workers can be fired arbitrarily with no welfare benefits. Their children have less chance of attending school and are virtually barred from a university education. They are blamed for nearly every urban ill and often evicted wholesale in advance of high-profile events such as the Beijing Olympic Games. They face a series of cultural and institutional barriers that make it almost impossible for them to become fully vested members of the urban community.

B. Urban Workers after the Smashing of the Iron Rice Bowl

Absence of job security and social benefits has also become commonplace for urban workers. In the past, the system called the “iron rice bowl” guaranteed

\textsuperscript{20} Id. at 329.
\textsuperscript{21} Id.
\textsuperscript{22} Id. at 326.
\textsuperscript{23} Local authorities will not implement safety regulations because they fear that investors and enterprises would relocate to other sites where regulations were known to be unenforced. The local government has a direct financial stake—in taxes, fees and illegal bribes—in the enterprises that they are supposed to regulate. See SATYANANDA GABRIEL, CHINESE CAPITALISM AND THE MODERNIST VISION 70-71 (2006).
\textsuperscript{24} A household registration record officially identifies a person as a resident of an area and includes identifying information such as name, name of parents and spouse, and date of birth.
lifetime tenure and the basic necessities of life to workers at state-owned enterprises (SOEs). One of the goals of the economic reform was to “smash the iron rice bowl”—to create a free labor market by abolishing lifetime job security and welfare benefits for regular workers. “It [was] hoped that this change would discipline a lackadaisical workforce and raise labor productivity.”

Under the new system, economic decision-making authority in state-owned enterprises was shifted from the central government to individual enterprises, which operate on a for-profit basis in a market economy. A factory manager thus determines personnel, production ratio, wages and prices according to market conditions. Unprofitable enterprises face the possibility of being closed down. Increasing numbers of the urban working class who used to enjoy lifetime job tenure and welfare benefits in state-owned enterprises have been changed into contract workers who sell their labor on the market. As economic reform deepens, more and more layoffs have occurred in state-owned enterprises.

Furthermore, the real extent of the laid-off worker problem is difficult to estimate, because the “laid-off” workers often are kept on the payrolls as employees of the factories under the xia gang system. This xia gang system is a transitional stage in the process of achieving the ultimate capitalist labor market. Because under the xia gang system the state enterprises do not fire the workers outright but only pay minimum wages to those who have been laid off, it is quite an effective way to reduce the operational costs of the factories without acknowledging the problem of the laid-off workers. To give an example, one factory in Guangdong Province nominally 3260 workers on its payroll, which were made up of some 1820 retired workers, 1260 laid-off workers and only 180 who were actually working. Large scale xia gang from SOEs started to occur 1998, and it is not uncommon in many SOEs to have more than half of the workers on their payroll laid off and living on minimum wage. By the end of 2002, there were nearly 27 million xia gang workers from SOEs.

In China’s urban areas the conditions of the labor market have been dominated by these changes in the SOE operating environment. The Fifth Census of China in 2000 provides some data to understand the urban unemployment situation. Based on the census, the unemployment rate in urban China reached as

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25 Meisner, supra note 6, at 261.
26 Id.
27 See Gabriel, supra note 23, at 57.
28 Some argue that the goal of Chinese economic reform is to create a completely capitalistic labor market, in which all workers freely sell their labor to others. Thus, the old “work unit” would be completely abandoned.
30 Id.
high as 8.27% in 2000. However, this unemployment rate does not truly reflect the unemployment situation, given that the “xia gang workers” are always excluded from calculation of the unemployment rate. It is believed the unemployment rate could be doubled if those xia gang workers are included. Many urban Chinese families thus find themselves with little or no access to health care, housing, secure pension or education opportunities, all of which once were part of the subsistence provided by the state. The vast majority of the urban population struggle to make ends meet on a daily basis. Their living standards are further seriously threatened by inflation. Poverty among them is rampant.

III. THE ROOTS OF INEQUALITY IN CHINESE SOCIETY: SOCIAL DARWINISM, NATIONALISM AND THE PURSUIT OF MODERNIZATION

As discussed above, China’s economic growth has depended on a labor force comprised of rural migrant workers and urban workers. Yet, these rural and urban laborers have been thrown onto the mercy of the market where their labor is freely bought and sold to those who are now in a position to exploit that labor for profit. This commoditization of labor is an eminent feature of the capitalist economy. The capitalist model of industrial organization demands a free labor force that is disposable and replaceable in accordance with the needs of market economy, at the mercy of “market conditions.” As wealth starts to concentrate in fewer people, most of the working population is left in a struggle for existence.

Although Deng Xiaoping’s post-1978 reforms have done their part in exacerbating inequality in Chinese society—a topic to which I return in Section IV—in this section I argue that the seeds for the inequality discussed above were in fact sown earlier, when Chinese intellectuals adopted Social Darwinism during the 19th Century. What is remarkable about the current social inequality in China is not merely its existence and scope, but the degree to which people accept it. China’s internalization of Social Darwinism explains this acceptance. As one observer noted, “At no previous time in her history has China ever seen phenomena such as today’s general lack of any feeling of social responsibility paired with the absence of any sense that this is a worrisome thing. Never before have so few citizens suffered pangs of conscience upon harming their fellows or

31 JuWei Zhang, A LITERATURE REVIEW OF LABOR MARKET POLICIES IN TRANSITIONAL CHINA 26 (2003). The author of this pamphlet may be reached at the Institute of Population and Labor Economics, Chinese Academy of Social Sciences, No.5 Jianwumennei Dajie, Beijing, 100732 or by e-mail: zhangjw@cass.org.cn.
32 Id.
33 Meisner claimed that the most distinctive capitalist character of the Chinese economic reform is the prevalence of wage labor. See Meisner, supra note 6, at 232.
the greater society. Never before have so many gazed upon the suffering of others with such utter indifference.”

In the sections below, I first describe the causes for Chinese intellectuals’ adoption of social Darwinism—a desire for modernization, driven by nationalist sentiments that were fueled by Western imperialism during the Qing Dynasty. I then discuss how social Darwinism in turn became the justification for the inequality in China during both the Mao and Deng regimes.

A. China’s Adoption of Social Darwinism

It is hardly a new phenomenon in Chinese history that Western technology, knowledge and political and economic system were used to serve the wealth and power of the Chinese state. In the late 19th Century, impinged upon by Western imperialism, the Qing Dynasty started the “self-strengthening” movement, which borrowed Western technology and methods in order to achieve national independence and modernization. China’s predominant concern was that if it remained a weak nation, it would become the prey of strong Western countries. In this view, in order to survive in the struggle among nations, China had to achieve industrialization and become as strong and powerful as the Western countries.

Chinese intellectuals believed that it is the uninhibited flow of the evolutionary process in the West that has accounted for its wealth and power and that, conversely, it is the inhibition of the evolutionary process that is the ultimate source of China’s poverty and debility. For the Chinese, the mechanism of evolution became a principle for explaining social order and offered a comprehensive worldview. It was said that the failure of the ancient Chinese sages to understand evolution delayed China’s modern development, and that it was the responsibility of the Chinese people now to grasp this “course of destiny” and realize Chinese industrialization.

Social Darwinism—which proposed that human beings are born into a limited space and come into conflict with each other, with nature preserving the superior of the species—thus became profoundly linked to the ideal of strengthening the Chinese nation-state and developed into the leading theory of China’s modernization. What impressed the Chinese most about social Darwinism are its “scientific” dimensions and apparent link to progress, since they hoped that, in the end, socialism, nationalism and popular welfare would be served through the process of modernization. “Whatever the immediate hardships for mankind is now, evolution meant progress and thus assured that the whole process

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34 Zi’an Liu, China Calls for Morality, CHINA FOCUS, April 1, 1994.
36 See id. at ch. III.
of life was tending toward some very remote but altogether glorious consummation.”

“Survival of the fittest” and “struggle for existence” came to be considered “natural laws”, and almost every Chinese philosopher—notably Yen Fu, Laing Qichao, Hu Shi, Chia Yuanpei, Lu Xun and Mao Zedong himself—had to reckon with these concepts at some time. Indeed, social Darwinism has exerted an influence upon all subsequent developments in Chinese modern history, Mao’s communist revolution and Deng’s market economy alike.

B. Survival of the Fittest and the Rural/Urban Split under Mao

The Chinese Communist movement was born in the same highly nationalistic milieu as the Qing Dynasty, with overriding concerns for the very survival of the Chinese state. Nationalism and social revolution reinforced each other during the long revolutionary struggle, and both were bound up with a desire for industrialization that had social Darwinian overtones.

By accepting Marxism, the Chinese Communist Party (CCP) hoped that China would be part of historical progression that could help her realize industrialization. Mao made immense progress in promoting China’s modern industrialization even as he sought Communist ideological purity. It was during the Mao era that China was transformed from one of the world’s poorest agrarian countries into a primarily industrial one. During that period, China developed its basic modern industries and a hybrid economy. In 1952, industry accounted for 36 percent of the gross value of output and agriculture 64 percent; by 1975, the ratio had been drastically changed, with industry making up 72 percent of the country’s economic product, and agriculture 28 percent. This industrial development was considered part of the socialist transformation in China—industrialization was an inevitable stage of the evolution which leads to communism.

The CCP’s pursuit of industrialization shared as much if not more with Social Darwinian notions of predestined social order and “economic election.” The CCP believed that the “industrial stage” of human development marks the highest stage of human evolution, and that to achieve industrialization is to follow the evolutionary process and grasp the course of destiny. Industry was organized not as Marx’s “communal property of associated producers” but as Maoist state property—the most effective way for the state to control all the necessary means

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38 RICHARD HOFSTADTER, SOCIAL DARWINISM IN AMERICAN THOUGHT 7 (1944).
39 Meisner, supra note 6, at 190.
40 Id.
41 Hofstadter, supra note 38, at 66.
42 Meisner, supra note 6, at 257.
43 Id.
and incorporate all the resources available to achieve industrial development. Notwithstanding its Communist rhetoric, the CCP under Mao in fact prepared China for further capitalist accumulation, and its philosophical outlook show plausible analogies with Social Darwinism, which as discussed treats industrialization as the highest stage of social order.

Not surprisingly given its Social Darwinian connection, industrialization under Mao generated social inequities in spite of the egalitarian socialist goals proclaimed by official language. One of these inequities was the rural and urban split. During part of the Mao era, for example, prices for agricultural products were artificially lowered by the government, thus creating the “scissors gap” that exploited the surplus value (“SV”) created by the peasantry to finance urban industrialization and provide cheaper consumer goods for urban workers.44

The rural and urban division was the result of “internal orientalism.” In the 19th Century, as a result of defeat at the hands of colonial powers, Chinese intellectuals were preoccupied with the question of what was wrong with China. They determined that the answer lay in the Chinese people, particularly the peasantry who, constituting the majority of Chinese population, were backward and retrograde. This view mirrored Western colonialist notions of Chinese people as a whole, but then deflected the perceived inferiority onto an internal “other”: the rural peasants.45 The rural people are portrayed as primitive and in need of improvement, in contrast to the urban population who represented modernity and progress.46 Migration from the countryside was considered a threat that must be controlled, as it could drag down urban progress to the level of the rural primitive.47

This notion of a bifurcated world of the rural and the urban bore a striking resemblance to Social Darwinism. As one commentator noted,

Rural agricultural regions, and rural peasants by extension, [were] blamed as the cause of China’s underdevelopment and seen as the objects to be developed; they are the necessary ‘other’ against progress and civilization. The progress of civilization, according to social Darwinism, depends upon the selection process. Rural population is inferior and backward. They are poorly adjusted to the modern industrialization. In this schema, being from a poor and

45 ARIANNE M. GAETANO & TAMARA JACKA, ON THE MOVE: WOMEN IN RURAL-TO URBAN MIGRATION IN CONTEMPORARY CHINA 14-16 (2004).
46 Id.
47 See Gabriel, supra note 23, at 60.
backward region takes on a social and moral taint that strains those geographically most remote from the urban centers of modern life.\footnote{Gaetano & Jacka, supra note 45, at 46-47.}

Under the above view, rural populations can only “raise their quality” by contact with urban people.\footnote{Gabriel, supra note 23, at 60.} Furthermore, equality between the urban and the rural is feasible only when rural people have been rendered worthy and intelligent. Under this view, unfairness to the “weak” rural population was justified by survival of the fittest—the alternative would be the survival of the “unfit”, which would lead China to fail in its efforts to modernize and render her once again vulnerable to defeat by other nations. The rural/urban inequality under Mao’s China thus derived from and was rendered palatable to the Chinese people by the Social Darwinian belief that any number of inferior individuals or groups may be sacrificed for superior individuals.\footnote{Schwartz, supra note 35, at 76 (1964).}

B. The Role of Competition in Deng’s Economic Reforms

The economic legacy of Mao’s regime was troubled by structural deficiencies as well as by social inequalities. By the end of the Mao era Chinese industry had started to suffer many problems—waste, inefficiency, bureaucratic rigidity, and declining productivity among them.\footnote{Meisner, supra note 6, at 197-205.} Deng Xiaoping and other Chinese reformers sought to remedy these problems. However, in many ways it would be a mistake to see a sharp dichotomy of a stagnant, planned economy in the Mao era and a dynamic, market economy in the Deng era. Rather, the modern industrial transformation of China should be seen as a continuing process spanning both the Mao and Deng eras. In both eras, industrialization was rooted in a collective effort to strengthen the nation through economic wealth and power and relied on some of the same social Darwinian justifications.

Under Deng Xiaoping, however, there was perhaps a more explicit abandonment of socialist egalitarian principles. When Deng and his allies ascended to power in 1978, they were not interested in correcting the social inequality, such as the rural/urban split that existed under Mao. On the contrary, they blamed the country’s economic stagnation on socialist “egalitarianism.”\footnote{“Egalitarianism” was denounced as a most grievous sin. Rural communes and urban working units were mocked as “eating out of the same pot.”} Their reforms were designed to abolish this perceived egalitarianism. Eventually, Deng dismantled the people’s commune and abandoned the “iron rice bowl.”
In place of alleged Maoist egalitarian values, Deng Xiaoping extolled the value of productivity and laid down the principle that “as long as it makes money it is good for China.” Another famous slogan of the era stated, “To get rich is glorious.” Implicit in such language is a primitive capitalist belief of “egoistic” energies that urge relentless pursuit of profit. Equality could hinder the maximization of wealth, and were officially denounced as ultraleftist ideology. Conversely, inequality was welcomed as a necessary cost of economic progress.

Although the leaders of the Communist Party still claimed a socialist lineage, socialism in its traditional sense hardly existed in China under Deng. Instead, for Deng, “[s]ocialism’s real nature is to liberate the productive forces, and the ultimate goal of socialism is to achieve common prosperity.”53 The desire for China’s economic power and wealth had replaced visions of a socialist utopia. Putting it another way, Deng stated:

Modernization does represent a great new revolution. The aim of our revolution is to liberate and expand the productive forces. Without expanding the productive forces, making our country prosperous and powerful and improving the living standards of the people, our revolution is just empty talk. We oppose the old society and the old system because they oppressed the people and fettered the productive forces. We are clear about this problem now. The Gang of Four said it was better to be poor under socialism than to be rich under capitalism. This is absurd.54

The primary concern of this “sinicized” version of socialism, then, was how to achieve wealth and power and to increase productivity. For the CCP under Deng, the answer to this question lay in “releasing the energy” from each individual.55 The exalted individual energies were then to be fused in the service of wealth and power of the country. Once the physical and intellectual capacities of the people were devoted to the economic sphere, it was believed, China would quickly achieve “socialist” industrialization. This focus on releasing individual energy is reminiscent of the Darwinian scheme, in which the thrust of human

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54 Deng Xiao Ping, Excerpt from Talk with Frank B Gibney, Vice-Chairman of the Compilation Committee of Encyclopedia Britannica, Inc. of the United States, Paul T.K Lin, Director of the Institute of East Asia at McGill University (1979).
55 In the Chinese tradition, the individual is subordinate to the social relationship. In this tradition, the key to maintaining a stable social structure is harmony rather than energy. In contrast, the modernists claim that “releasing the energy” can help individuals reach their potential and also generate greater productive force.
energy is crucial in the struggle for survival and in which survival of fittest required the fullest realization of human capacities.

The focus on “individual energies” is not the only similarity between the principles of Deng’s economic reforms and social Darwinism. Famous reform-era slogans such as “To get rich is glorious” and “Some must get rich first” sanctified the competition that leads to social inequality, and the pursuit of self-interest became the hallmark of Chinese socialist market economy. In fact, to Deng and his reformers, it is the very economic disparities created by competition that provide the incentives for greater productivity. “In the evolutionary perspective, equality is ridiculous.”56 The essentials of the reform were thus quite simple. It rewarded the ambitious and the entrepreneurially inclined and casted out those weaker and less skillful. Ultimately, therefore, the underlying ideologies in Deng’s economic reforms were survival of the fittest and self-assertion, concepts that clearly belonged to Spencer’s Social Darwinism.

Who are those “getting rich first” in China’s economical transformation? In rural areas, as the communes were dismantled and collective assets were distributed, those who were better connected and physically better endowed were those who “got rich first.” The local officials were at particular advantage for acquiring the largest and best parcels of land for themselves. They also used their power of approving contracts for the land and for operation of various private businesses for private gain.57 In the urban economy, “smashing the iron rice bowl” led to fierce competition for resources that rewarded those who possessed business energy and were better adapted to the new commercialism. It is the successful entrepreneur, no longer the peasant or worker, who is portrayed as the hero of the new age.58

Under Deng’s reforms, the unstated opposite of the slogan “Some must get rich first” is that some others who are not as productive are doomed to fail. Inequality became a blessing that is welcomed and accepted. The law of competition justified greediness and legalized selfishness. The prosperous director of a shoe company in Shandong loudly proclaimed to a journalist, “If you want to work hard and use your head, anybody can be rich. If you are lazy, you cannot.”59

56 Hofstadter, supra note 38, at 59.
57 Hinton characterized this as a “scandalous rip-off” which only helped those so-called “specialized families” with money, and ability. See also Meisner, supra note 6, at 500 (“Among the newly privileged are commercial farmers and landholders who employ labors on large scale; well-to do private entrepreneurs in financial, commercial and industrial undertakings; a new managerial and professional elite who are the greatest beneficiaries of profit-making enterprises both industrial and commercial; bureaucrats in state enterprises and government offices involved in the market.”).
58 Meisner, supra note 6, at 495.
59 Marcus W. Brauchli, As the Rich in China Grow Richer, the Poor are Growing Resentful, THE WALL STREET JOURNAL, October 19, 1993.
The current brutality of the treatment in China of those without power, such as rural migrants and laid-off urban workers, and the callous indifference to the suffering of others, may be terrifying. Yet it is a logical concomitant of the widespread belief among the Chinese people in the survival of fittest. Under this view, one’s success does not prevent others from achieving the same. However, someone has to lose in the competition for resources. Inequality is the result of natural law, and “[t]he whole effort of nature is to get rid of [the unfit], to clear the world of them, and make room for better.”60 If a man loses in the competition, that is either because of his own fault or unlucky circumstances.61 Whatever reasons cause his unfitness, however, he should be eliminated.62 To many, this is all part of the natural selection that brings about progress.

Social Darwinism contemplates human misery as inevitable reality. If human society is a field of struggle for survival, each individual has to face up to the hardship of life and the inescapability of suffering. Once again, one can detect tenets of this philosophy in the justifications that have been offered for the inequalities created by Deng’s economic reforms.

IV. INEQUALITY WITH CHINESE CHARACTERISTICS: STATE CAPITALISM, LEGAL TRANSFORMATION, AND THE EXACERBATION OF INEQUALITY IN CHINA POST-1978

In the previous section, I discussed the similarities between the social inequalities during the Mao and Deng eras, particularly their roots in Social Darwinism. I do not mean to suggest, however, that there were no differences between Mao and Deng or that there has not been an exacerbation of social inequality since Deng’s economic reforms.

In truth, even as living standards have risen gradually since 1978, exploitation of labor has intensified, and the social gap in China has gotten wider. In the attempt to become modern, the Chinese Communist Party under Deng adopted market economy and abandoned socialist ideology. Government has ceased to be the provider of social services, and the people themselves have been forced to assume responsibilities for finding healthcare, housing, education, income and other necessaries through the market.

Furthermore, a market economy and the pursuit of modernity have produced exploitive relationships. The Chinese people have lost their status as the “master of country” and instead have to sell their labor in the market. “Wrenching images of great wealth and abject poverty have become commonplace and the masses of

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60 Hofstadter, supra note 38, at 57.
61 Id. at 41.
62 Id.
impoverished people live alongside with numbers of new rich.” While the overwhelming majority eked out only a bare existence, China’s nouveaux riche—successful entrepreneurs, managers, technicians, and profiteering bureaucrats—have engaged in gluttonous consumption and pursued lifestyles “similar to upper-income U.S. citizen, complete with upscale housing, luxury automobiles, gourmet cuisine, and high-fashion clothing and jewelry…”

In this section I explore why the problem of social inequality has worsened since 1978, focusing on the particularly exploitative potential of China’s state capitalism and the changes in the legal system that have legitimized the inequality created by Deng’s economic reforms.

A. Alignment of State Interests with Labor Exploitation in State Capitalism

As mentioned above, despite the official rhetoric of communism, China has been moving rapidly toward an essentially capitalist economy. One might say that capitalist economies everywhere generate inequality by widening the gap between rich and poor. According to Marxist theory, in a capitalist economy it is the difference between the cost and the value of production that creates the enormous surplus value. Thus, this value is extracted from labor. It is the owners of the capital, however, who receive the benefit of the surplus and who then reinvest it to further expand production in a ceaseless cycle of profit maximization and capital accumulation. Under this scenario, “material progress does not merely fail to relieve poverty—it actually produces it.”

China’s quasi-capitalist regime also depends on this process of extracting value from labor in order to increase productivity. But, as I discuss below, there are unique characteristics of Chinese capitalism that might cause its working people to suffer greater exploitation compared to other capitalist economies.

1. The Features of Chinese State Capitalism

Given the Chinese economic reform’s focus on “releasing the energy” of the individual, it might seem that China is moving towards some form of economic liberalism. Underlying the apparent move towards economic liberalism, however, is Chinese nationalism and a collective desire for national wealth and power. Under Deng’s reforms, the released energies of the individuals are to be guided by the state in a direction that will enhance the wealth and power of the state.

63 Meisner, supra note 6, at 499.
65 See Meisner, supra note 6, at 498.
66 HENRY GEORGE, PROGRESS AND POVERTY 12 (1911).
In countries that have pursued capitalist modernization in an effort to catch up to other industrial nations, the state often becomes the creator of the capitalist economy and of the bourgeoisie class. Bismarck’s Germany and Meiji Japan are examples. Both countries embraced a version of “top-down” capitalism that swept away feudal barriers to rapid modernization.\(^{67}\) In this type of “top-down” capitalism, a strong and authoritarian state tries to modernize the nation and builds a labor-repressive system to extract surplus value from the workers. China after 1979 represents an extreme version of this phenomenon. Because there was no existing urban or rural bourgeois class in China at the time, the “revolution from above” was an even more prominent feature in China’s economic reforms than it was in either Germany or Japan. This lent a particularly bureaucratic character to Chinese capitalism that continues to this day.

The Communist victory of 1949 ended the Guomindang system of bureaucratic capitalism, eliminating both the urban bourgeoisie and the rural landlords. Although the old ruling classes were removed, the new workers and the peasant class did not grow to fill the resulting void. Instead, during the Mao era, a new class of Communist bureaucrats began to dominate Chinese political and economic life.\(^{68}\)

After Mao’s death, China’s modern market reformers were determined to restructure the bureaucratically controlled and centrally planned economy to promote efficiency. As Deng Xiaoping’s economic reforms began, the Communist bureaucrats were positioned favorably to take advantage of the new market mechanisms. Bureaucratic apparatus and market economy soon came together. This combination formed not “socialist market economy” but “bureaucratic capitalism”.\(^{69}\)

The rapid expansion of market relationship, the enormous growth in foreign trade, the influx of foreign capital, the decollectivization of agriculture, the encouragement of private enterprise, and the various forms of

\(^{67}\) Barrington Moore used the term “conservative modernization” to describe this phenomenon of belated capitalist development involving a bourgeois “revolution from above” that does away with feudal barriers to the capitalist economy. See Moore, supra note 7, at chs. 5 & 7. See also Meisner, supra note 10, at 343.

\(^{68}\) To some degree, state capitalism already existed under Mao. In Maoist China, workers also had no control over the conditions and products of their labor. Adam Ulam called it the case of “capitalism without the capitalist”. See ADAM ULAM, THE UNFINISHED REVOLUTION, MARXISM AND COMMUNISM IN THE MODERN WORLD 45 (1979). Instead, labor and the products of labor were controlled by the Communist bureaucratic apparatus, which also governed vast tracks of land and most of the resources for industrial production. Thus, despite the socialist revolutionary rhetoric, Communist bureaucrats dominated Chinese social economic life. Meisner, supra note 6, at 55.

\(^{69}\) Bureaucratic capitalism is a term that refers to the use of political power and official influence for private pecuniary gain through capitalist or quasi-capitalist methods of economic activity. Meisner, supra note 6, at 300.
decentralization that loosened central control over the economy combined to breed corruption in epidemic proportions and to transform many Communist bureaucrats into quasi-capitalist entrepreneurs, or, into a new bureaucratic bourgeois stratum.\(^70\)

It is one of the ironies of Chinese market reform that what was intended to break down a bureaucratically controlled command economy has served instead to re-strengthen Communist bureaucrats.

Under Chinese state capitalism, state power and capitalist exploitation are profoundly intertwined. In rural China, for instance, the government introduced a new form of industrial enterprise: TVE (Township and Village enterprises). Tens of millions of peasants are hired as wage laborers in these rural industrial enterprises, which form the most rapidly expanding sector of the Chinese economy. Even though the TVEs are referred to as “collectively owned enterprises,” the township and village governments control the assets of the TVEs and enjoy “residual claimant rights over the enterprises’ profits.”\(^71\) Government officials act as principals in the TVEs, have control over an extensive array of economic decisions, and possess a *de facto* right to appropriate surplus values generated by the TVEs.

State power and capitalist exploitation have become symbiotic in the TVEs. The government provides a wide range of support for the TVEs, including special access to loans, electricity, telephone service, and other public infrastructures. By virtue of their political connections, these “red hat” TVEs are also more likely to secure contracts and licenses on favorable terms. In return, “TVEs provide major financial support for agricultural development and the budgets of governments at the country level. For example, in 1994, rural enterprises across the country turned in 159.1 billion yuan to the government, i.e., 31.03% of the annual income derived from taxes of all types.”\(^72\) In addition to paying various taxes and fees to the government, TVEs usually make distributive payments to the government as well, which could amount to “1-2 percent of the firm’s output.”\(^73\)

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\(^70\) *Id.* at 309-10.

\(^71\) Local governments are the *de facto* owners of the TVEs. The local government is the location of the appropriation and first distribution of the Surplus Value generated within a TVE. Maria Edin, *Why do Chinese Local Cadres Promote Growth? Institutional Incentives and Constraints of Local Cadres*, Forum for Development Studies 97, 101 (1998).

\(^72\) Gabriel, supr note 23, at 90.

The situation is similar in the city. Although reforms gave more responsibilities to managers in state-owned enterprises, which gives the appearance of gradual diminution of state ownership, the state continues to play a key role in these SOEs. This is not surprising. Since the SOEs usually are strategically important industries that are crucial for the Chinese economy or the military, the state wishes to block private control and be able to directly appropriate surplus value. The budgets of the SOEs remain integrated with the state budget, and the state retains control over value flows in these firms.74

Under the new arrangement set up by the reforms, the state actually receives more total revenue from these enterprises in the form of taxes, fees and other remuneration. Thus, the fact the state releases its ownership in an SOE does not imply that the interdependence of state and enterprise is diminished. SOEs remain within the state bureaucracy. Despite corporatization, for example, the directors in SOEs “remain state functionaries who administer the firm budget and enter into contractual obligations subject to constraints determined by higher-level state officials.”75 Under these conditions, senior management of the SOEs have only limited powers, while important decisions—production quotas, input and budget allocations, and the hiring and firing of managers—are largely made by the party-state.76

Given the above, the SOEs are administrative-business complexes that serve as instruments of state-controlled exploitation. As in the TVEs, there is coordination between state officials and SOEs. The same government officials making decisions regarding the granting of government benefits to businesses are often also involved in the operations of some of these businesses.77 As a result, government officials can use their political influence to divert public property for their enterprises’ use, reaping vast fortunes in the process. With corporate titles such as “board directors,” these government officials make powerful connections for their companies—they give favorable recommendations, pull strings and generally serve as backers of the companies.

2. Worker Exploitation and Inequality under State Capitalism

The state capitalism fostered by the 1978 reforms has exacerbated social inequality in China and is problematic for several reasons. First, when the state sets itself the task of profit maximization and supports the exploitation of the

74 Gabriel, supra note 23, at 112.
75 Id.
76 Id. at 102.
77 The masses have a name for these officials—“official speculators,” a breed much more harmful than unofficial small speculators. Meisner, supra note 10, at 331.
workers, the workers may be subject to even harsher exploitation than usual, given the power at the state’s direct disposal.  

The case of the TVEs is illustrative. Due to the direct link between the TVE profits and government interests, the government favors reducing the value of labor to extract even more surplus value from workers. The government joins with business enterprises to create new mechanisms for raising worker productivity and/or lowering the cost of labor, including reducing enterprise benefits, decreasing wages, and pushing workers to work harder and longer hours. Significant exploitation of labor occurs as a result. Many employees work twelve-hour days. Overtime during the weekend is common. Low wages are universal. Many workers are young teenagers and are pitilessly exploited at TVEs. One worker in an electronics factory in Shenzhen said, “Our basic salary is only 230 yuan a month. We have to work 14 hours a day, seven days a week. The compensation for overtime is only 2 yuan an hour. We can’t eke out a living with such a salary.”

While the peasantry and rural migrant workers were ostensibly lauded as the “revolutionary masses”, they are frequently deprived the “right to work” and can be fired at the arbitrary will of the managers. There are no unemployment benefits for TVE workers. The surplus value created by their labor is transformed into taxes that go to the rural government. A large percentage of these monies is used to build government office buildings and purchase luxury cars for the officials. In fact, excessive spending by local governments often leaves insufficient funds for normal enterprise development or even salaries for the workers.”

A second, related problem is the conflict of interests inherent in state capitalism. In state capitalism, the state relies on state-created bourgeoisie, such as state bureaucrats, to implement economic reform as well as to display entrepreneurial initiative. By virtue of the position it occupies, this bourgeoisie class is uniquely well prepared for capital accumulation and productive investment. As a result of the close relationship between the state and capital, however, a common phenomenon under state capitalism is the use of political power for private ends.

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78 The political-economic structure of the Chinese state capitalism is reminiscent of mercantilism in 17th century Europe, in which the individual’s economic interests were made to serve the ends of the state. See ELI HECKSCHER, MERCANTILISM 293 (1983). Since the only consideration that carried weight within that system was the economic profit that would serve the power of the state, the interests of the individuals, including workers’ interests, may be sacrificed for state interests.


80 Gabriel, supra note 23, at 91.
In China, the new bourgeoisie is largely composed of Party officials, their relatives, and their friends. The introduction of market economy into the state bureaucratic apparatus transformed many Communist party members into capitalist entrepreneurs. Eagerness in the pursuit of wealth and loyalty to the Communist regime became equally important qualifications for being a good member of the Communist Party. Corruption is widespread. Bribery, payoffs, the misappropriation of government funds, backdoor deals and the sale of state property for private profit are pervasive at every level of government. The significant amounts of capital accumulated by China’s economic growth often went to the small group of people within the state bureaucracy. This creates ever-greater inequalities in wealth and social status, which are determined by one’s place in the political hierarchy.

Moreover, as pursuit of private pecuniary interests becomes the priority, these state bureaucrats take ever-more aggressive steps to exploit workers. In China, one often hears scathing remarks such as “The workers do the work, and the cadres take the money” and “The ‘masters’ (that is, the workers in official ideology) supply the labor while the ‘public servants’ fill their pockets.” The phrases “government joined with merchants,” “government officials in bed with capitalists,” and even “a unity of government and business interests” have been heard often as well.

A third problem is perhaps more intangible. State capitalism conceives the welfare of the state largely in economic terms. Since the primary aim of such a system is to maximize the welfare of the state, the pursuit of material wealth becomes a pervasive preoccupation of the state bureaucracy and the entire society, at the expense of other values such as the intrinsic worth of individuals. Eventually, morality may come to be seen in economic terms as well—as nothing more than a matter of calculating gains and losses. In such a system, “dehumanization” may occur, leading to widespread indifference towards workers’ well being, and even greater ruthlessness and more intensive labor exploitations may be justified by the grandiose rhetoric of national interests. Deng’s principle, “As long as it makes money, it is good for China,” is striking in its clarity that money is China’s ultimate goal today. Patriotism and the making of money have become one and the same.

Meisner, supra note 6, at 329.
Schwartz, supra note 35, at 241 (1964). Even assuming that interests of the state is served by maximizing its power and wealth, state capitalism often maximize the power and wealth of the small group of individuals controlling the state apparatus rather than the power and wealth of the state per se. As discussed above, throughout Chinese history and certainly during the post-reform era, corruption meant that “being an official and making a fortune” have always been linked together. See Meisner, supra note 6, at 331.
B. The Legitimation of Inequality under Law

The earlier parts of this paper have argued that the changes happening in China are not limited to the economic sphere, even if some of them were economic in origin. Rather, China’s political, cultural and legal systems have also been transformed. Changes in the legal system are frequently used to legitimize new social and economic orders, and may create unintended consequences as well. In this section I discuss changes in China’s legal system that may have cemented the social inequality originally created by Deng’s economic reforms. I will focus in particular on issues relating to property and contract laws.

It was unlikely that Deng Xiao Ping intended to establish a capitalist regime when he proposed his reform program in 1978. Faced with the real threat of economic stagnation, Deng only wanted to selectively use the market and other capitalist devices to jumpstart China’s economy. The ultimate goal, however, was to achieve socialism while strengthening the Chinese nation. After thirty years of reform, the Chinese government continues to insist that China has a “socialist market economy”. Socialism, according to Beijing, rests on two loosely interpreted principles: first, state or collective ownership of the major means of production, and second, remuneration in accordance with the principle of payment according to work.

Yet neither of these principles remains true in China today. De-collectivization has turned land and other productive resources collective property in name only, while the growth of wage labor has turned the labor of the workers into commodities. Property law has been the fundamental mechanism for facilitating the development of private ownership in China. Similarly, contract law hastened the commodification of labor by providing a rhetoric of equality and freedom that disguised the unequal bargaining powers of the parties.

1. Property Law and Privatization

Before the economic reforms, Communist bureaucrats were powerful, but they were unable to root their power in property. Their privileges cannot be passed on to their descendants. The lack of private property ownership is one of the main factors cited by those who maintain that China is still socialist.

The reforms, however, introduced a de facto system of private property in China, by allowing individuals and corporations to lease the land from the collective and the state, which held nominal title to the land. Under the Household Contract System, for example, rural collective land remained collective property in

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84 Meisner, supra note 6, at 329.
85 Id, at 233.
86 Id.
name but essentially became the private property of those who had contracted for its use, because the contracted lands could be rented, bought, sold and mortgaged.

In the city, the state nominally has the ownership of all land. Since at least 1988, however, Chinese law has recognized that a private party may have a right to use lands owned by the government in a way that creates a valuable market commodity. This is called a “granted land use right.”87 A “granted land use right” for housing can last up to 70 years; for industrial, public and commercial purposes, such right can last up to 50 years. The state cannot take the land away from the holders of granted land use rights during the term of the land use right, except under the circumstance where the land is taken for public use. Moreover, if the government seeks to take the property away for public use, it must compensate the holder of the land use right for the loss of the right. The 2004 Constitutional amendments sanctified individual private property to the same inviolable level as public property and added the language guaranteeing compensation from the state whenever property is expropriated or requisitioned from a private party. Other movements toward de jure private property have occurred in housing and other real estate as well as in stock markets. The predominant means of production now are now privately owned in a significant sense.

From the government’s perspective, ambiguity in property title is perhaps a virtue. “It allows greater leeway for the operations of China’s state capitalism, giving some credence to the socialist claims of Communist leaders.”88 Nevertheless, state and collective ownership have become fictions in China.89 The main beneficiaries of privatization are enterprising bureaucrats. The Chinese Communist Party, once the champion of the poor, now pursues policies that safeguard the property rights of the new rich. State bureaucrats can now convert their material privileges into capital under the legal device of private property rights.

Rule of law plays an important role in justifying capital accumulation and investment consolidation by China’s newly rich. “What determined who got rich and who did not, was not the amount of labor people contributed to social production but rather the ownership of land, capital and machinery used to exploit labor.”90 The changes in the Chinese legal system after 1978, including changes to property law and constitutional amendments, legitimize privatization and reframes China’s political and economic discourse in the language of the new capitalist mode of production and distribution. By doing so, it has opened vast new

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88 Meisner, supra note 6, at 513.
89 Id. at 340.
90 Meisner, supra note 6, at 233.
opportunities for China’s bureaucratic capitalist to use their unique positions to appropriate public resources for private use.

2. Contract Law and the Commodification of Labor

The Chinese economic system before the reform had significant problems, including a bloated bureaucracy, overly centralized power, a patriarchal bias, overstaffing, inefficiencies, and petty corruption. In many ways, it was ill suited to achieve superior economic performance. Nevertheless, before the 1978 economic reform, the communes and the “iron rice bowl” system provided workers in both rural areas and cities a wide range of social services—housing, health care, permanent employment, education, and pension among others.

Since 1979, peasants have rushed into cities to sell their labor in the factories, under conditions of intense exploitation. Huge numbers of urban workers with guaranteed lifetime tenure under Mao have been laid off without much resistance. As discussed in Section II above, these have been the results of the demise the communes in the countryside and the “smashing” of the “iron rice bowl” in the cities.

Contract law played an important role in accelerating the abolishment of the communes and the “iron rice bowl” by introducing a new conception of economic justice built on equality and efficiency. It popularized the notion of equal parties who are free to reach of an agreement. Contract law promised to relax state control over the lives of individuals, protect citizens’ economic rights from arbitrary state infringement, and provide greater flexibility and freedom to parties to define their economic relationship. In the employment context, for example, contract seems to give an employee the freedom to choose where he wants to work. Similarly, the employer is free to choose whom he wants to hire. Goods and services are exchanged on equal footing under consensual terms.

Compared to the promise of equality, freedom, and efficiency promised by contract law, the Iron Rice Bowl system and the communes, which depended on an authoritative government and a planned economy, seemed like remnants of a feudal system. Instead of equal commercial exchange, the old systems seemed to be based on state paternalism. Instead of encouraging increased productivity, they seemed to provide perverse incentives that foster inefficiency.

Contract law’s promotion of independence and individualism, and its encouragement of the pursuit of private and individual interests, struck a chord with the Chinese people. It gave them an alternative free from their traditional subordination to state power and obedience to party policy. In view of some of the arbitrary and oppressive bureaucratic practice under China’s old economic system, it is not surprising that contract law elicited enthusiastic support from the people.
But contract law failed to live up to its rhetoric of equality. It calls for full commodification of labor—i.e., labor freely bought and sold in the market. Workers, however, suffer from a disparity in bargaining power that is unacknowledged, because contract law’s focus on the formal equality of contracting parties conceals real inequalities in wealth and power. Workers have no power to bargain for better working conditions, less exploitation or any welfare services. As independent labor unions are forbidden in China, workers have no collective bargaining power to fight against dominant capital or state bureaucratic apparatus. Because of the hidden inequality in resources and the threat of unemployment for workers, contract law in reality fosters social obedience and discipline.

To be fair, the Chinese Communist Party realizes the contradiction between the official rhetoric of socialism and the depreciation of labor value. Laws and regulations have been promulgated in attempts to alleviate the social crisis existing in China and to give better protection to the workers. For example, labor law and the Regulations on Enterprises Minimum Wage were designed to guarantee a minimum level of income for workers. According to the regulations, a monthly minimum wage was to be set for full-time workers: in February 2010, Jiangsu and Shanghai set the minimum monthly wage to 960 yuan (about US$140.62), while Shenzhen set the minimum wage to 1000 yuan per month, the highest in China.91

However, it is questionable whether these legal mechanisms have been effective. For instance, the minimum wage instead has often become the maximum salary industrial enterprises are willing to pay. Conditions for workers also may be worse than indicated by the law. Enterprises can lower wages below the legal minimum by imposing a “negative efficiency” wage element, with wages deducted for violations of enterprise rules:

[T]he wage system is constructed on a rigid system of penalties, deductions and fines. Factories have their own internal regulations in breach of China’s labor laws. Workers caught in violation of such rules will be fined. Fines are meted out for being late, for negligence at work; for talking and laughing at work, and for forgetting to turn off lights…. Thus, some of the wages that a worker has earned during the month can, because of a multitude of deductions, be withheld.92

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In short, the remedial efforts by the government have not been entirely successful. One possible reason these legislations have not been very successful is that they are largely borrowed from the Western legal tradition. Thus, while they are intelligent, logical rules that are internally consistent, they were not derived with China’s particular political, cultural and social contexts in mind. The purposes of the laws could not be properly served because the laws are divorced from reality and lack local support, which could in turn lead to ineffective enforcement and a further decline in the authority of these laws. The labor regulation discussed above is one example of this.

What is clear is that the Communist state is orchestrating China’s transition to market economy. As part of this orchestration, the state has reconstructed its legal system to help China’s economic growth. New legal relationships have been created to facilitate commercialization. In particular, a growing bureaucratic capitalist class has become the key player in China’s economic development. The changes in the legal system are well suited to defending their entitlements and consolidating their interests. With the support of the reconstructed legal system, the bureaucratic capitalist class now can firmly root their power in private property and maximize their wealth through market transactions.

“The existence of highly developed, rational, legal institutions was, in Weber’s view, a necessary precondition of emergence of capitalism.”93 The reform of China’s legal system after 1979 is an obvious attempt to pave the way for the establishment and operation of China’s new bureaucratic capitalist economy. Unfortunately, in many ways this new legal system has helped to increase socioeconomic inequality in China. Whether it has also been a force for reforming unfair social relationships and for protecting China’s workers against arbitrary power is beyond the scope of this paper.

V. CONCLUSION

Modernization in China is inextricably linked to economic growth and the search for maximum profit at minimum cost. The Chinese government continues to insist that the economy remains essentially socialist. However, in the effort to maximize efficiency, the state has had to exploit workers to a greater extent than previously, and social inequality has become a greater problem than ever before. Although the official rhetoric remains “socialist” in China, the ideologies underlying its economy are thus quite different.

China is hardly unique in suffering the incongruous coincidence of economic progress and social deterioration, even though it is a common assumption that modernization will also bring about equality, democracy and

political liberty. Underlying this assumption is a latent belief in the power of knowledge and science to organize the world into a superior, rational, and coherently linked whole.94 Cheng Kuan-ying, a famous reformer, claimed that if the Chinese utilized “technology in its most refined form,” they would eventually realize a world unified through the “benevolence” of the “true king.”95

In its nation-wide pursuit of modernization, China embraced this optimistic vision of technology and science with blind enthusiasm. Because technology and science are very useful tools for solving difficult problems of the material world and for improving people’s standards of living, many believe that they must be morally valid as well. In fact, in this view moral enlightenment results from scientific knowledge. In China, this faith in science and technology was complemented by a Spencerian view of the evolutionary process. Many Chinese people perceive modernization and industrialization as an upward, positive, creative, evolutionary process that leads to a better future.

Part and parcel with this perception, however, is a belief in the darker side of Social Darwinism—competition for resources and survival of the fittest. It is now commonly accepted by the Chinese people that competition is the only means for natural selection and that “moral progress is largely the accumulation of economic virtues.”96 “The image of ‘nature red in tooth and claw’ has become the image of daily life.97 The struggle for existence defines modern human relationships, while the assertive and “egoistic” instincts of human nature are seen as part of the “cosmic” design spurring on human progress.98 In this way, social inequality becomes something that gives meaning to the “law” of survival of the fittest and is supplied with a cosmic rationale.99 The language of social Darwinism has become a standard feature of Chinese daily life and forms a crucial part of the unstated creed of the age.

One of the many problems with this blind faith in “science” is that modernization has occurred as a process that is external to the self and lacks any connection to individual personal quests for truth and morality. Both the pursuit of wealth and power and survival of fittest have the tendency to put the pursuit of selfish interests above all else, but they leave a moral hollowness within each individual. There is no “inner connection” between material progress and the inner dignity of the individual. Thus, while modernization has brought about enormous improvements in efficiency, what has come with it are moral despair and identity

95 Id. at 217.
96 Hofstadter, supra note 38, at 61.
97 Schwartz, supra note 35, at 46.
98 Id. at 108.
99 The concept of a cosmic rationale comes from Hofstadter’s Social Darwinism in American Thought. Hofstadter, supra note 38, at 57.
crises. Our inner moral beings are shattered and sympathy and reciprocity are lost. It is difficult to overstate the social costs of industrialization in China. Many fear a complete collapse of moral standard.

Compassion for the suffering of others was one of the most important moral aspects of Confucian teaching. One might recall Wang Yang-Ming’s feelings of unbearable agony as he witnessed the misery of his countrymen:

Indeed there are cases when people see their fathers, sons, or brothers falling into a deep abyss and getting drowned. They cry, crawl, go naked and barefooted, stumble and fall. They hang onto dangerous cliffs and go down to save them.... Now to stand beside to see drowning and make no attempt to save them but to bow, talk, and laugh is possible only for strangers who have no natural feelings of kinships, but even they will be considered to have no sense of pity and to be no longer human beings.100

Yet, in modern China sympathy and compassion for others often seemed to have been abandoned entirely. The pursuit of modernization and technology has provided license for brutal exploitation of the mass and the ruthless elimination of those perceived as unfit. With increasing material wealth but a decline in morality, it remains a matter of dispute whether industrialization will allow the Chinese people to realize their cherished political and social ideals. “But as long as the increase wealth brings the sharper contrast between the rich and the poor, more suffering and anxiety among the working people; progress is not real and cannot be permanent.”101

The economic development in the past three decades have failed to evoke a spirit of unity on a large scale in China and have thus failed to build a morally integrated society. Whether and how external instrumentalities can help realize one’s inner moral nature within the context of modernization remains an important question for the future. We have all entered the uncharted sea of the modern world. The philosophical struggle between science and morality, and the problematic relationship between progress and inequality, remain unsolved in the West as much as they do in China.

100 Metzger, supra note 94, at 216 (citing William Theodore de Bary, Self and Society in Ming Thought 159-160 (1970)).
101 Henry George, Progress & Poverty 8 (1880).