

SPORADIC LAW ENFORCEMENT CAMPAIGNS AS A MEANS OF SOCIAL CONTROL: A CASE STUDY FROM A RURAL-URBAN MIGRANT ENCLAVE IN BEIJING

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I. INTRODUCTION

The launch of economic reforms and the subsequent explosion of legislation have inevitably changed the way in which state and society relate in contemporary China. Before reforms began, people were fixed in their work units or villages, through the strict enforcement of the household registration or *hukou* system. The patron-client relation, or the instrumental personal ties between individuals and low-level officials within work units, played an important role in maintaining social control.¹ Since reforms began, however, the state has offered more and more space to society, in order to stimulate the market economy. As a result, it has sought to govern and control society through use of legal rules.² An unavoidable question, therefore, is how does the state bring these legal rules into play?

One of the major themes of related literature is that law is not a limit on the state, but instead an instrument by which political power is exercised and protected.³ While these studies offer a general picture of the role of law in China, they are inadequate in that most of them look principally at formal legal institutions and conduct doctrinal analysis using Western legal concepts.⁴ Due to the limitations of this approach, they cannot answer how exactly law operates in real life; specifically, they do not address the role of law in balancing economic development and political stability, especially when the two conflict; nor do they address the effect of law on pre-existing hierarchical social classifications. Moreover, the emphasis of the instrumental use of law often assumes or implies that the state is able to achieve its goals via the mechanism of law, while legal realists and legal sociologists often remind us of the indeterminacy and unintended consequences of legal enforcement.⁵ These studies, carried out largely through doctrinal

¹ See ANDREW WALDER, *COMMUNIST NEO-TRADITIONALISM: WORK AND AUTHORITY IN CHINESE INDUSTRY* (1986).

² See Vivienne Shue, *State Sprawl: the Regulatory State and Social Life in a Small Chinese City*, in *URBAN SPACES AND CONTEMPORARY CHINA* 90-112 (Deborah Davis et al. eds., 1995).

³ See, e.g. Pitman Potter, *The Chinese Legal System: Continuing Commitment to the Primacy of the State Power*, *THE CHINA Q.*, 674 (1999); Michael Palmer, *The Re-emergence of Family Law in Post-Mao China: Marriage, Divorce and Reproduction*, Donald C. Clarke & James V. Feinerman, *Antagonistic Contradictions: Criminal Law and Human Rights in China*, both in *THE CHINA Q.* 141 (1995); Edward Epstein, *Law and Legitimation in Post-Mao China*, in *DOMESTIC LAW REFORMS IN POST-MAO CHINA*, at 19 (Pitman Potter ed., 1994).

⁴ See Stanley B. Lubman, "Introduction", in *DOMESTIC LAW REFORMS IN POST-MAO CHINA*, at 14 (Pitman Potter ed., 1994) for a critical assessment of the literature.

⁵ For works of legal realists, see Karl N. Llewellyn, *The Normative, the Legal, and the Law-Jobs*, 49 *YALE L. J.* 1355-1440 (1939-1940), and *Law and the Social Sciences—Especially Sociology*, 14 *AM.*

analysis of legal texts, thus are quite likely to neglect the complexity of legal enforcement in the real world.

Taking a grassroots-level empirical approach, this article advances its inquiry through a case study of a rural migrant community in Beijing.⁶ I examine the interaction between internal migrants and the state, and explore how a piece of legislation governing migrant business was widely evaded, and the reasons why sporadic campaigns, an important method of law enforcement in China, were used by the state against migrants in the enclave. By so doing, I argue that law is not just a simple instrument of the state for achieving its goals, as asserted by many previous studies.⁷ Instead, law, through its enforcement by sporadic campaigns, is a sophisticated regime, one that balances the interests of high and low levels of government, reinforces an existing hierarchical relationship, and ultimately fulfills the goal of social control. Further, I argue that even seemingly ineffective laws affect society in indirect and unconscious ways.

Two reasons led me to address these issues by through study of an internal migrant enclave. For one thing, internal migrants are themselves a result of the economic reform which loosened the shackles on the movement inside the country;⁸ the interaction between these people and the state offers a direct contrast between the social control regimes before and after the introduction of "rule by law".⁹ For another,

SOC. REV., 451-62 (1949). See also JEROME FRANK, *COURTS ON TRIAL: MYTH AND REALITY IN AMERICAN JUSTICE*, at 441 (1963). For research of legal sociologists, see ROSS CRANSTON, *REGULATING BUSINESS: LAW AND CONSUMER AGENCIES* (1979), Gregory J. Massell, *Law As An Instrument of Revolutionary Change In A Traditional Milieu: The Case of Soviet Central Asia*, 2 LAW & SOC'Y REV. at 179-228 (1968).

⁶ The article is based on interview evidence from two sources. I myself interviewed about 15 officials and more than 100 migrants during the summers of 1998, 2000, and 2001 in Beijing. I lived in a migrant community for more than one month during the summer of 2001. The second source of fieldwork materials comes from Xiang Biao, Li Zhang, and Jong-Ho Jeong who have studied Zhejiang Village, the internal migrant enclave that was also the site of my fieldwork, very closely.

⁷ See *supra* note 3.

⁸ Statistics show that there were about 80-100 million internal migrants in 1997 and 120 million in 2002, more than the total population of most countries. This number is from the National Statistics Bureau, cited in SINGTAO DAILY, Oct. 7, 2002, China Section.

⁹ Rule by law is a goal which Chinese leaders profess publicly in the post-Mao period. See DENG XIAOPING, *Uphold the Four Cardinal Principles*, in *SELECTED WORKS OF DENG XIAOPING* 166, 167 (1984) ("In the two and a half years since the overthrow of the Gang [of Four], we have . . . secured a political situation marked by stability and unity; this situation is both a prerequisite and a guarantee for our socialist modernization."). "Strengthening the socialist legal system" was central to these reforms and was intended to restore the confidence of Chinese citizens in the legitimacy of the government and to counteract the cynicism and alienation engendered by the Cultural Revolution. In addition, the Chinese leadership has considered the growth of the legal system to be a prerequisite to the attainment of the 'four modernizations': the modernization of agriculture, industry, national defense, and science and technology.

sporadic law enforcement campaigns adopted as a way of law enforcement in combating migrants shed light on similar campaigns used for many other purposes: for example, the anti-crime campaign, the recent campaign against unregistered internet cafes, and the campaign against illegal publishing businesses. I hope that this case study can illuminate the way law is enforced in China more generally.

This article first documents the development of the migrant enclave, known as Zhejiang Village, and the interaction between migrants and the state. It then explores why sporadic campaigns were adopted by the state to combat migrants, and who were the winners and losers as a result. It concludes that the state in general has an interest in controlling, but not eliminating, migration, and that the use of campaigns satisfies the needs of different, competing interest groups within Chinese bureaucracy and society.

II. A TALE OF ZHEJIANG VILLAGE

Before delving into the interaction between migrants and the state, there is a need to describe the formation of Zhejiang Village. This community appeared against the background of the internal migration wave of the mid-1980's. There were many factors leading to the unprecedented migration. First, the adoption of the household responsibility system in the countryside greatly improved agricultural efficiency, and generated a large labor surplus in the countryside, freeing some 100 to 200 million peasants to leave the land.¹⁰ Second, the rapid development of the urban economy generated the need for a large number of cheap laborers and craftsmen. Third, migrants were able to obtain basic resources in cities because of the emergence of the market and the collapse of the original regime for rationing basic daily goods.¹¹ These people, originally from rural areas, came to cities for better job opportunities and living conditions. Zhejiang Village is only one of the migrant enclaves in Beijing; it is named after the home province of most of its inhabitants.

¹⁰ See Jeffrey Taylor & Judith Banister, *Surplus Rural Labor in the People's Republic of China*, in *THE UNEVEN LANDSCAPE: GEOGRAPHICAL STUDIES IN POST-REFORM CHINA*, at 87-120 (Gregor Veeck ed., 1991). See also DALIA DAVIN, *INTERNAL MIGRATION IN CONTEMPORARY CHINA* (1999).

¹¹ Rationing of daily necessities such as cooking oil, pork, cloth, grain, bicycles, sewing machines, watches, and coal for cooking and heating remained in effect into the early 1980's, when it was eventually curtailed. See MARTIN WHYTE & WILLIAM L. PARISH, *URBAN LIFE IN CONTEMPORARY CHINA* (1984).

1. *The Formation of Zhejiang Village*

Zhejiang Village is not a real village as defined by China's official administrative structure, nor is it a clearly bounded migrant area separated from areas inhabited by Beijing locals. It is actually a region without clear boundaries scattered among many administrative villages in the southern suburban area of Beijing. It centers on the Dahongmen area, which is part of Nanyuan Township in Fengtai District, one of Beijing's suburban districts.¹² The area is conveniently close to central Beijing, about five kilometers from Tiananmen Square. In 1995, the official Beijing *hukou* holders in this area numbered 25,835, while the number of permanent migrants stood at 96,000, with the rate of migrants to official residents as high as eight to one in some areas.¹³ Beginning in the early 1980's, these migrants, mainly hailing from Zhejiang province, transformed the area's once-impoverished farmlands and slaughterhouses into one of the most important garment production bases in China. The area produced 200,000 heavy wool overcoats and leather jackets and 100,000 cotton-padded clothing items per day in 1995. The annual turnover of Zhejiang Village in 1995 was estimated at around 1.5 billion yuan.¹⁴ The Village was also home to nearly 20 wholesale markets.¹⁵ Most migrants in Zhejiang Village were in the garment business, though different surveys come out with slightly different statistics on this point.¹⁶ It was estimated that Zhejiang

¹²Beijing, as the capital city of China, has its downtown and suburban areas under the municipal administration. The suburban area is composed of near-suburban areas, i.e., Fengtai, Shijingshan, Chaoyang, and Haidian, and far-suburban areas that comprise nine counties. The near-suburban areas like Fengtai are traditionally known as "the urban-rural interaction belt" where state intervention is relatively less robust. That is one of the reasons why Zhejiang migrants chose to settle down there. See XIANG BIAO, *KUAYUE BIANJIE DE SHEQU [A COMMUNITY BEYOND BOUNDARIES]* (2000); See also LI ZHANG, *STRANGERS IN THE CITY: SPACE, POWER, AND IDENTITY IN CHINA'S FLOATING POPULATION* (2001).

¹³XIANG, *supra* note 12 at 26.

¹⁴See XIANG, *supra* note 12.

¹⁵See JONG-HO JEONG, *RENEGOTIATING WITH THE STATE: THE CHALLENGE OF FLOATING POPULATION AND THE EMERGENCE OF NEW URBAN SPACE IN CONTEMPORARY CHINA*, Ph. D dissertation, Yale University (UMI Article Services, 2000); XIANG, *supra* note 12; and ZHANG, *supra* note 12.

¹⁶For example, a Zhejiang Village-area Industry and Commerce Bureau official estimated that more than 95 percent of the migrants there were in the garment business or related fields. See WANG CHUNGUANG, SHEHUI LIUDONG HE SHEHUI CHONGGOU: JINGCHENG "ZHEJIANG CUN" YANJIU [SOCIAL MOBILITY AND SOCIAL RECONSTRUCTION: RESEARCH ON "ZHEJIANG VILLAGE" IN THE CAPITAL], (1995); a report on Zhejiang Village prepared by the government of Fengtai district in 1996 indicated that more than 50,000 of the 96,000, the total number of migrants in Zhejiang Village officially documented by the state, were engaged in the manufacturing and selling of clothing, and the rest were peasants from various provinces, hired by the Zhejiang migrant entrepreneurs. See Laurence Ma & Biao Xiang, *Native Place, Migration and the Emergence of Peasant Enclaves in*

migrants occupied about 80 percent of the median and low quality garment wholesale market in Beijing.¹⁷

It took more than ten years for Zhejiang Village to attain its current scale. There were three stages during the process of its expansion.¹⁸ The first stage was from 1980 to 1984, when about one thousand migrants from the city of Wenzhou (in Zhejiang Province) arrived in the Dahongmen-Nanyuan area and lived in local rural households, by renting extra rooms from locals. At this point they had not formed an identifiable community. In the second stage, from 1985 to 1989, a much larger number of Zhejiang migrants drifted into Nanyuan township, into the area that quickly became known as Zhejiang Village. During this period the settlement expanded rapidly; by 1986, the number of Zhejiang migrants had reached 12,000, almost equal to the number of local Beijing residents.¹⁹ By 1989, there were already some 30,000 Zhejiang migrants living and working in this area. Most dealt in textiles, but some also opened profitable service businesses such as restaurants, clinics, vegetable markets, and barbers' shops.

The third stage began in the early 1990s, when Zhejiang Village experienced sustained rapid development. By 1995, 48 large private housing compounds had been constructed by migrant construction firms and became new residence and production sites for tens of thousands of migrant manufacturers and workers. At the same time, some 20 wholesale markets, each composed of several thousand small stalls, were created by Zhejiang migrants. Most stalls sold garments or garment-related products, including leather products, clothing, shoes, socks, sheets, buttons, and comforters.

Beijing, THE CHINA Q. 155, at 546 (1998). According to Wang's survey of 120 Zhejiang migrants in Zhejiang Village, 90 of them were tailors, 24 were counter-renters, and 17 were stall-renters. See WANG at 86-89.

¹⁷ See Marguerite Johnson, *Bright Lights, Pink City*, TIME, Feb 21, 1994, at 47; According to Beja and Bonnin, migrants' share of the market in several products was in the range of 40-50 percent; but for leather jackets, it was up to 70-80 percent and as high as 90 percent for buttons and zippers. See also Jean Philippe Beja & Michel Bonnin, *The Destruction of the "Village"*, 2 Nov/Dec CHINA PERSPECTIVE 1995, at 25.

¹⁸ XIANG, *supra* note 12; ZHANG, *supra* note 12; WANG, *supra* note 16, at 86, (1995).

¹⁹ Biao Xiang, *How to Create A Visible 'Non-State Space' through Migration and Marketized Traditional Networks: An Account of A Migrant Community in China*, at 12. Paper presented on the International Conference on Chinese Rural Labor Force Mobility, Beijing, Jun 25-27, 1996.

2. Beijing's Restrictive Regulations

With more and more migrants pouring into Beijing,²⁰ the Beijing municipal government was faced with a series of challenging questions: how to prevent more migrants from coming into the city where basic facilities were already under extreme pressure, and how to control migrants who had no legal place of residence? Under the *hukou* system, simply physically moving to a new jurisdiction and remaining there for a length of time has no effect on one's legal residence. To officially migrate, people have to change their *hukou* registration, which historically has been very difficult. Most migrants therefore simply chose to stay in the city without official permission and run the risk of falling afoul of the authorities. Meanwhile, to avoid strain on the city's resources, the Beijing municipal government was striving to control the migration.

While many migrants basically took dirty, difficult, and dangerous jobs urbanites did not want to take,²¹ many others wanted to set up family-based small businesses. One way to extend control over migrants was to strictly control the permitting process through which migrants set up their businesses. Thus, a discriminatory legal treatment, based on the applicant's *hukou*, was adopted by the Beijing municipal government.

The first local regulation regarding this issue was the Management Measures for Migrants Conducting Business in Beijing, issued by the Beijing municipal government in January 1991. Article Six of the Measures states that an individual entrepreneur, or *getihu*, who is not a legal Beijing resident must apply for a Beijing Temporary Business License from the Beijing Industry and Commerce Bureau

²⁰ Official statistics show that non-official registered citizens in Beijing numbered 3.29 million in November 1994, 2.29 million in 1997, 3.08 million in 2000, and 3.28 million in 2001. Seventy to eighty percent of these non-official citizens were migrant laborers and entrepreneurs. For 1994 figures, see Xiong Daxin, *Guanyu "Beijing Shi Lai Jing Wugong Jingshang Renyuan Guanli Tiaoli (cao'an)" de Shuoming* [The Explanation Regarding the Draft of "Beijing Management Regulation on Migrant Laborers and Entrepreneurs"], in WAI DI LAI JING RENYUAN GUAN LI SHIYONG SHOU CE [MANUAL BOOK ON MIGRANT LABORERS AND ENTREPRENEURS MANAGEMENT] (Beijing Labor Bureau ed., 1995). For the remaining statistics, see Beijing Statistic Bureau, BEIJING SHI 2001 NIAN WAILAI RENKOU DONGTAI JIANCHE DIAOCHA SHUJU GONGBAO [REPORT ON CURRENT SITUATION AND CHANGING PATTERNS OF MIGRATION IN BEIJING IN 2001] (Mar. 6, 2002), available at <http://www.bjstats.gov.cn/tjyl/tjgb/200207170007.htm>.

²¹ To control migrants, the host governments limited the job categories for which migrants were eligible to apply. See, e.g., Beijing Labor Bureau, *Benshi Yunxu he Xianzhi Shiyong Waidi Wugong de Hangye Gongzhong* [The Job Categories and Professions in which Migrant Employment is Allowed or Restricted], in WAI DI LAI JING RENYUAN GUAN LI SHIYONG SHOU CE [MANAGEMENT MANUAL BOOK FOR MIGRANTS IN BEIJING] 139 (1995).

(hereinafter “ICB”), showing the ICB a temporary residence permit, a work permit (*wugong zheng*), and other relevant documents. The law did not specify what were the “other relevant documents” required by Article Six; further interpretation was left to the municipal ICB.²²

Since then, more and more regulations have been promulgated. In 1995, the Beijing People’s Congress enacted a Management Statute on Migrant Laborers and Businessmen. The Beijing municipal government then promulgated ten regulations on the management of migrants.²³ These regulations indicated an intent on the part of Beijing authorities to regulate migrants in a more “legal” and systematic way.²⁴

According to these regulations, there were ten requirements for a *getihu* license, including at least six permits or documents which migrants had to present in their license application. See Table 1. Items one to six had to be presented when the application was filed. The rest of the required documents (items seven to ten) were required after the

²² Beijing Municipal Government, MANAGEMENT MEASURES FOR MIGRANTS CONDUCTING BUSINESS IN BEIJING, January 1991.

²³ These regulations are:

1. BEIJING SHI WAIDI LAIJING RENYUAN HUJI GUANLI GUIDING [BEIJING REGULATION ON THE MANAGEMENT OF RESIDENCE PERMITS FOR MIGRANTS];
2. BEIJING SHI WAIDI LAIJING RENYUAN ZULIN FANGWU GUANLI GUIDING [BEIJING REGULATION ON THE MANAGEMENT OF HOUSING RENTAL FOR MIGRANTS];
3. BEIJING SHI WAIDI LAIJING RENYUAN ZULIN FANGWU ZHIAN GUANLI GUIDING [BEIJING REGULATION ON THE MANAGEMENT OF PUBLIC SECURITY FOR HOUSING RENTED BY MIGRANTS];
4. BEIJING SHI WAIDI LAIJING RENYUAN WUGONG GUANLI GUIDING [BEIJING REGULATION ON THE MANAGEMENT OF MIGRANT EMPLOYMENT];
5. BEIJING SHI WAIDI LAIJING RENYUAN JINGSHANG GUANLI GUIDING [BEIJING REGULATION ON THE MANAGEMENT OF THE BUSINESS ACTIVITIES OF MIGRANTS];
6. BEIJING SHI WAIDI LAIJING RENYUAN JIHUA SHENGYU GUANLI GUIDING [BEIJING REGULATION ON THE MANAGEMENT OF MIGRANT FAMILY PLANNING];
7. BEIJING SHI JIMAO SHICHANG GUANLI GUIDING [BEIJING REGULATION ON THE MANAGEMENT OF CENTRALIZED MARKETPLACES];
8. BEIJING SHI WAIDI LAIJING RENYUAN CONGSHI JIATING FUWU GONGZUO GUANLI GUIDING [BEIJING REGULATION ON THE MANAGEMENT OF DOMESTIC SERVICE BY MIGRANTS];
9. BEIJING SHI WAIDI LAIJING RENYUAN MUBIAO GUANLI ZEREN ZHI GUIDING [BEIJING REGULATION ON THE MIGRANT MANAGEMENT RESPONSIBILITY]; AND
10. BEIJING SHI WAIDI LAIJING RENYUAN GUANLI FUWU FEIZHENGSHOU GUIDING [BEIJING REGULATION ON THE MANAGEMENT OF REGULATION FEES OF MIGRANT LABORERS AND BUSINESSMEN].

Many of these regulations were actually a more comprehensive version of regulations promulgated earlier. For example, the Beijing Regulation on Management of the Business Activities of Migrant Businessmen in Beijing was simply a more comprehensive version of the 1991 Management Measures on Beijing Activities of Migrants. In fact, the texts of the two were basically the same. There were a few differences, however. The new Regulation, for example, added that lawful evidence of a fixed business site must be presented; applicants must have education higher than middle school, and female applicants must present a marriage and fertility certificate.

²⁴ The regulations promulgated by the Beijing municipal government are usually called local government regulations (*difang zhengfu guizhang*). Those passed by the Beijing Municipal Congress are local laws (*difang fagui*).

license was approved, but before the business was allowed to operate. The first five documents were extra or discriminatory requirements targeting migrants only.

Table 1: Documents needed in a *getihu* license application for migrants in Beijing.

1	Temporary Residence Permit (issued by a local Beijing police office)
2	License or Letter of Introduction from the ICB of the migrant's place of origin
3	Lawful Evidence of a Fixed Business Site
4	Rental Agreement with Beijing Landlord
5	Educational Certificate Higher than Middle School
6	Marriage and Fertility Certificate (female applicants only)
7	Tax Registration Certificate
8	Health Permit
9	Selling Price Supervision Certificate
10	Permission to Hire Migrants (if applicable)

The restrictive or discriminatory attitude of the Beijing municipal government toward migrants can be seen clearly from these regulations: it was possible to get a license, but migrants needed to present more documents than locals, and the government had total discretion on which documents were actually required. Furthermore, obtaining many of the needed documents, particularly the temporary residence permit, was time-consuming, difficult, and very expensive. Obviously, the Beijing municipal government intended to limit the issuance of *getihu* licenses to migrants, with a view to checking the flood of migrants pouring into the city.

3. Legal Collusion: the Strategy of Migrants

My fieldwork investigation indicates that “legal collusion” was one of the most important strategies employed by migrant entrepreneurs to overcome the hostile legal regulation and law enforcement campaigns. The key to legal collusion is the collaborative relationship between migrant entrepreneurs and local Beijing business entities or

bureaucracies.²⁵ In legal collusion, migrant entrepreneurs paid rents to locals, in exchange for licenses and protection. Both sides benefited from the collaboration; migrants entered the garment market with the protection of local allies, while locals gained extra income.²⁶ This subsection will illustrate a few methods of legal collusion in greater detail.

When migrants first came to Beijing, they made a living selling garments on the street without any kind of official permission or license. When officials appeared, they fled. Although migrants could make some money this way, the overall experience was risky and often painful. When asked about these experiences, migrants emphasized the difficulty of the constant effort to avoid being detected. Migrants had to be very alert and constantly ready to escape, and their wares might be confiscated at any time; this had the additional obvious effect of discouraging long-term investment.

a. Rental from Local *Getihu*s and State-Owned Shops

To overcome the shortcomings of street vending, many migrants wanted to get into the formal street shops or stalls in big shops. Beginning in 1986, some large and mid-sized state commercial enterprises in Beijing began renting out stalls or fronts.²⁷ But only legal (and therefore local) *getihu* were entitled to rent stalls from the state-owned shops (hereinafter SOSs). At the same time, the law stated very clearly that any lending, re-renting, reselling, or changing of licenses was prohibited. Migrants were not permitted to re-rent licenses from other entities.

Migrants nonetheless started to collude with locals. As Beijing *getihu* by definition held Beijing *hukou*, it was very easy for them to get a license or rent a stall. Migrants began to approach Beijing local *getihu* and rent licenses from them. From the standpoint of a local *getihu*, this was a very good situation; after the relatively simple process of

²⁵ Note the distinction between migrant entrepreneurs and average migrant laborers. In Zhejiang Village, entrepreneurs are those who operate small family-businesses in clothing production and trade. They usually have tailoring skills and small amounts of capital. By contrast, migrant laborers mainly engage in unskilled work, taking positions as construction workers, domestic servants, car washers, or road sweepers. The migrant entrepreneurs are the focus of this section.

²⁶ Although this kind of collaboration seemingly takes a legal form, it is technically illegal because it is not specifically permitted by any level of government. It may thus also be called 'illegal collusion.' The author would like to thank Cai Yongshun for pointing this out.

²⁷ Xiang Biao, *Beijing You Ge "Zhejiang Cun"* [There is a "Zhejiang Village" in Beijing], CHENGSHI JINGQI QUYU JINGJI [URBAN ECONOMY AND REGIONAL ECONOMY] 33 (1994).

obtaining a stall or license, they could earn large returns without working by turning around and renting their licenses to migrants.

For a stall, migrants usually paid two to three times the original rent. After local *getihu* and migrants reached an agreement, they would sign a simple contract, stating the parties' names and the amount of rental for the stalls. Because re-renting was illegal, the contract could not be lawfully enforced; it served only as evidence of the two parties' agreement. Sometimes the real license holder would visit the stall once or twice a day, in case ICB officials checked unexpectedly.

Gradually, migrants realized that managers of the state-owned department stores presented an even greater opportunity; collusion with the managers then began in earnest. From the perspective of the enterprises, managers had their own motives for bending the law by renting stalls to migrants. As reforms deepened, the inefficiency of state-owned enterprises became apparent. Renting stalls to migrant entrepreneurs, who offered a wide variety of desirable goods, worked extremely hard, and paid higher rent, became a path to easy profitability. Because the rental income was far above what the SOSs could have earned if they themselves conducted the business, and migrants were eager to shift their businesses from street-vending to formal stalls, this type of cooperation quickly became widespread.

b. Rental in the Guise of the Joint Operation System (1987-present)

In 1987, joint operation (*lianying*) arrangements became legal in Beijing, and migrants soon figured out that the new commercial form could provide better protection. The joint operation form derived its legality from the General Principles of the Civil Law.²⁸ The form was more popularly called "bringing factories into shops" (*yingchang jingdian*), meaning that two business entities could sign a long-term cooperative agreement, sharing profit and bearing liability accordingly. However, only registered business enterprises were entitled to do this and the two enterprises had to co-operate in the business.

There were some important differences between stall rental and joint operation. See Table 2. A *getihu*, not being a formal enterprise, was not allowed to participate in this arrangement; they could, however, still rent a counter or stall from an SOS.

²⁸ GENERAL PRINCIPLES OF THE CIVIL LAW OF THE PEOPLE'S REPUBLIC OF CHINA, Art. 51-53.

Table 2: Differences between the Renting and the Joint-Operation system		
	Stall Rental	Joint Operation
Eligibility	Local <i>getihu</i> with Beijing <i>hukou</i>	Business Entities (Beijing or Other Provinces)
Co-Operation Requirement	No	Yes
Approval Procedure	Approval from the ICB	Registration at the ICB
Renting Signboard Requirement	Yes	No
Extra Five Percent Rental Tax	Yes	No

Also, in a joint operation, the parties had to share profit and bear joint liability in the business. Stall rental, on the other hand, did not require both parties' participation in the operation. As long as the rent was paid, local SOSs did not participate in any business of the stall. The permit process was also far simpler for the joint operation; simple registration, rather than approval, was needed from the ICB.²⁹ Furthermore, stall renters had to put up a sign indicating that the space was rented³⁰ while no corresponding requirement was placed on joint operations. Finally, an extra five percent rental tax was imposed on stalls.

Both migrant entrepreneurs and Beijing SOSs immediately realized that they could make use of this new form in their collaboration—renting stalls in the guise of a joint operation. This option was attractive because of the streamlined registration practice (the ICB generally had no excuse for refusing to accept the registration,

²⁹ This distinction between Joint-Operation and counter-renting can also be found in the revised Beijing Regulations on the Management of Housing Rental for Migrants, Art. 5 and 7.

³⁰ See *Beijing Shangye He Fuwuye Chuzu Tanwei Zanxing Guanli Guiding* [Provisional Administrative Regulation on Commercial and Service Businesses Renting Stalls in Beijing], in 4 GONGSHANG XINGZHENG WENJIAN HUIBIAN 299 [SELECTION OF INDUSTRIAL AND COMMERCIAL ADMINISTRATIVE DOCUMENTS] (1988). As rented stalls were usually perceived as places selling garments with fake trademarks, the ICB required the posting of a "rented" sign on these stalls to alert consumers and to make it easy to check out possible problem spots.

as long as the paperwork was done properly). Also, the lack of a rental sign requirement was a big boost to business; consumers were usually skeptical about the quality of garments sold in rented stalls.³¹

While benefiting from the joint operation form, Beijing SOSs did not in fact jointly operate shops and share liabilities and profits. In reality, as stalls were so in demand by migrants, the SOSs found that it was unnecessary for them to share any of the risk with their disadvantaged partners. They therefore simply combined the advantages of rental and joint operation, renting stalls to migrants under the guise of cooperation.

Of course, this use of the joint operation form, while widespread, was not officially permitted by the ICB. In these agreements, migrants had to provide an official copy of a garment-producing enterprise license. The SOS would provide all the documents needed to substantiate the supposed joint operation, and were also responsible for dealing with officials. As the situation evolved, SOSs began to take deposits from migrants. Whenever there were issues with officials, the deposit would be used to bring the business into compliance with law, or sometimes to bribe the officials. Since the joint operation was legal on its face, this type of collusion was much more difficult for the authorities to detect.

c. License Evasion in Garment Selling Markets (1994-present)

Since the early 1990s, garment stalls became more and more popular in Beijing. Constructing marketplaces therefore became a lucrative business. In the 1990's, many large marketplaces were constructed in Zhejiang Village. As marketplace owners depended on stall rent for survival, they paid a great deal of attention to collecting rent and ICB fees but pay little attention to whether their migrant tenants had a license or not. As a result, according to an official investigation in central Zhejiang Village, of 3724 garment businesses, 3376 had no licenses.³²

Through collusion with local *getihu* and local bureaucratic institutions, migrants entered the garment market in Beijing. In

³¹ Interview with migrant worker, Beijing (July 15, 1999).

³² See Xiang Biao, *Chuantong Yu Xin Shehui Kongjian de Xingcheng: Yige Zhongguo Liudong Renkou Shequ De Xingcheng Shi* [The Formation of Traditional and New Social Spaces: A History of A Migrant Enclave of China], 2 ZHANLÜE YU GUANLI 10 [STRATEGY AND MANAGEMENT] (1998).

exchange for the camouflage provided by local individual and institutions, migrants had to pay.

4. Sporadic Law Enforcement Campaigns

Statistics like those above show the ineffectiveness of restrictive regulations alone in controlling complex problems like migration. In the face of this situation, law enforcement campaigns emerged as a means of establishing order. Such campaigns are a fixture of contemporary China, and trace their roots to the revolutionary tradition of the Chinese Communist Party (CCP). During the revolutionary period, the CCP had to rely on mass movements and campaigns to implement its policies because it had no state institutions.³³ Moreover the CCP's comparatively weak position meant that it was required to mobilize all available resources to achieve its goals. Campaigns remained important throughout modern Chinese history, and survive today despite the CCP's metamorphosis from revolutionary party into governing institution. The most notable recent examples of this phenomenon are the "Strike Hard" anti-crime campaigns that were initiated in 1983, 1986, 1996 and 2001 to counter perceived rises in crime and to restore social order.³⁴ Such campaigns, although clearly at variance with appeals to rule of law, lend themselves naturally to dealing with inherently complex situations.

In Zhejiang Village, campaigns were usually launched in the name of "cleaning-up and reorganizing" (*qingli zhengdun*) to combat unregistered migrants, unlicensed businesses, and illegal housing compounds.³⁵ The scale of each campaign varied, depending on how committed the state was to pursuing the campaign. Over the history of Zhejiang Village, campaigns took place frequently every year,³⁶ sometimes reaching 15 within an eight month period.³⁷ Towards the

³³ See SHIPING ZHENG, *PARTY VS. STATE IN POST-1949 CHINA: THE INSTITUTIONAL DILEMMA* 154 (1996).

³⁴ See Susan Trevaskes, *Courts on the Campaign Path in China*, 41 *ASIAN SURVEY* 5, at 674 (2002).

³⁵ Interview with deputy police officer, in Zhejiang Village (Jul. 15, 2000).

³⁶ Migrants called these campaigns "political typhoons." A boss of a small photo-taking shop in Gaozhuang, Zhejiang Village told me the following: "I do not know exactly how often these campaigns take place, but I do know my business's busy season will be coming around June 4th [the memorial day of June 4, 1989, the date of the Tiananmen Square crackdown], October 1st [the PRC national day], and New Year's Day. Obviously the government initiates campaigns during these dates, and migrants will come to my shop for photo-taking for their temporary resident permit application." Interview with shop owner, Gaozhuang (Jul. 28, 2002).

³⁷ From January to August 1990, the Fengtai district government launched 15 large- and small-scale "clean-up" campaigns against migrants. The operation involved nearly 600 cadres, including a large

latter part of the 1990s, campaigns frequently took place during politically sensitive periods or immediately before important national holidays, for example June 4 (the anniversary of the Tiananmen Square crackdown), October 1 (Chinese National Day), and the meetings of the National People's Congress and the National People's Political Consultancy in March. Some were organized by the Fengtai district government and some were launched by the municipal government.

These campaigns usually consist of four stages. The first step is mobilization. After a decision to initiate a campaign is made, state actors start mobilizing various resources. One important method of mobilization is organizing meetings which are attended by representatives of various branches of the bureaucracy to convey the theme of the campaign and to arrange detailed measures. Propaganda is the second step. In Zhejiang Village, this takes the form of government work teams trying to persuade migrants to voluntarily leave Beijing. Then a formal government announcement is released to migrants and local residents, outlining the rationale and urgency of the campaign. Accompanying this are propaganda flyers with similar but simplified contents. The official rhetoric at this stage focuses on justifying the campaign by invoking the ideal of rule by law. Resistance from the target of the campaign is the third step. While propaganda may have persuaded some migrants to leave the city temporarily, most do not, instead waiting to find out how serious the government was in this campaign. Minor campaigns pass over soon, leaving migrants free to continue business as usual.

The final step is enforcement. In the case of Zhejiang village, campaign workers start rounding up migrants who have no legal identity card, no legal job, and no legal fixed residence (this situation is referred to in Chinese as "the three withouts"). For those who claimed that they did not have enough money to buy a ticket home, a detention and repatriation program was used as punishment.³⁸ Poor migrants were held in detention and had to work for a period to earn train fare to their home provinces. Some migrants could even be subjected to "labor reform" (essentially a prison sentence) for six to eight months and repatriated afterwards. During particularly intense campaigns, enforcement agents have even been known to tear up permits in good

number of policemen, who collected about 20,000 yuan of fines and confiscated countless tools and garment materials from migrants. See JEONG, *supra* note 15.

³⁸ Interview with police officer, Fengtai Public Security Bureau Legal Department, in Fengtai (Jul. 30, 2000).

order and subject their law-abiding holders to detention and repatriation.³⁹ During campaigns that reach this extreme stage, most migrants move out of Beijing temporarily and bide their time until things cool down and it is safe to return and resume business.

III. WHY SPORADIC CAMPAIGNS WERE ADOPTED TO COMBAT MIGRANTS

This section addresses the key question of this article: why sporadic campaigns were adopted by the Beijing municipal government to enforce the law. Campaigns are by no means the best choice for the government; they cause respect for law to suffer, enforcement officials to use unsavory methods, and discretion to be exercised arbitrarily.⁴⁰ In the present case, migrants were punished for conducting otherwise legal and totally harmless business. They were treated unfairly compared to their local collaborators when collusion was detected: they were punished by confiscation of goods, fines, and even detention and repatriation, receiving no compensation even if their stalls were bulldozed, while their local partners lost nothing but rental income. This is hardly the rule by law envisaged by the architects of post-Mao China.

One obvious explanation for the use of campaigns is that they were necessary because institutional infrastructure was not well established.⁴¹ This may have been the case during the revolutionary period or even during the early days of Communist rule; however, today the Chinese state is very strong and sophisticated, with a variety of institutions that are set up specifically to deal with migrants.⁴² This old justification seems to be inadequate to explain the survival of campaign-style law enforcement today.

Another possible explanation for sporadic campaigns is inadequate resources.⁴³ The Beijing municipal government might lack

³⁹ See Xin He, *Why Do They Not Obey The Law?* (2003) (unpublished J.S.D. dissertation, on file at Stanford Law Library).

⁴⁰ See HERBERT L. PACKER, *THE LIMITS OF CRIMINAL SANCTION*, 287 (1968).

⁴¹ See Yia-Ling Liu, *Reform From Below: The Private Economy and Local Politics in the Rural Industrialization of Wenzhou*, *THE CHINA Q.* 130, at 293 (1992).

⁴² Institutions that play a role in migrant management include the Police, the ICB, the Tax Bureau, the Housing and Land Bureau, the Birth Control Committee, and street and neighborhood committees.

⁴³ See, e.g., WAILAI RENKOU DUI DA CHENGSHI DE YINGXIANG HE DUICE [THE IMPACT OF MIGRANTS ON BIG CITIES AND CORRESPONDING STRATEGIES], at 358 (Li Mengbai and Hu Xin eds., 1991). Li and Hu mention that tax collectors lacked the personnel and energy to track down migrant tax evaders.

sufficient funds to routinely enforce a particular law, or might wish to invest precious resources elsewhere. However, aside from the lack of direct evidence of hardship in the bureaucracy, the situation in Zhejiang Village does not accord with this idea. In Dahongmen, for example, there are 17 police officers, and each marketplace has around 20 security guards on staff. Police equipment is also very advanced by Chinese standards, including patrol cars and extremely detailed maps indicating the exact numbers of migrants living in every room in the region.⁴⁴ It seems that the state should be able to control migrants with the resources they have.

This section proposes an alternative explanation for state behavior; it argues that differences in interests and concerns between upper-level and lower-level governments⁴⁵ over the migrant economy are the ultimate reason why the law was enforced through sporadic campaigns. For upper-level government, such as the Beijing municipal government and the central state, the primary concern is to maintain social stability and the legitimacy of those in power; these concerns led to the promulgation of laws restricting migration in the first place. Lower-level governments, such as district governments, are concerned more about their immediate interests—what they can extract from the migrant economy—and thus resist sustained enforcement of the law against migrants.

One of the consequences of these conflicts and tensions is that the machinery the upper-level government relies on to enforce the law is ineffective. Officials of the lower-level governments pay more attention to collecting rents from migrant-owned businesses or bribes from involved locals than to checking for business licenses. Because of these incentives for non-compliance at the lower level, the law that represents the concerns of the upper-level government is not able to penetrate society, or to sustain its influence. That is why the upper-level government has to initiate clean-up campaigns, which rely on temporarily assembled work teams instead of on the local police, who, as vested interests, are ineffective. The upper-level government is simply unable to count on bureaucrats that have a stake in the Zhejiang Village economy to carry out expulsion and demolition. Because the

⁴⁴ Interview with police officer, Dahongmen Police Office, Zhejiang Village (Jul. 27, 2002).

⁴⁵ I use “upper-level government” to refer to the central and municipal government because these two levels have, to a large extent, convergent policies towards migrants; “lower-level government” refers to district and township government.

members of the campaign work teams had to return to their regular jobs and the campaign itself was costly, it was of necessity short-lived.

Sporadic campaigns can also be looked at more cynically as a tacit agreement between lower-level and upper-level governments in which both get what they desire. In so doing, the upper-level government maintains social order. Campaigns indicate that the upper-level government is making efforts to enforce the law. To some extent, campaigns in Zhejiang Village pacified the potential resentment of some locals toward migrants and thus enhanced the government's popularity. On the other hand, the lower-level government continued to realize material benefits from the migrant economy with only a temporary interruption every now and then.

1. Differences of Interest Between Lower and Upper Level Governments

Due to their economic success, the migrant community of Zhejiang Village became an important source of income to local residents and local government. Official statistics indicated that Zhejiang Village had a sales volume of 1.5 billion yuan in 1995.⁴⁶ According to a rough estimation of Zhejiang Village's contribution to the Fengtai district, migrants paid 50 million yuan in tax and industry & commercial regulation fees, 5 to 6 million yuan in health regulation fees, 40 to 50 million in temporary residence fees, and 50 million yuan in rent each year. Other than that, of the roughly 200 million yuan in tax that the Fengtai district government handed over that year to the upper-level governments, 100 million was provided by Zhejiang Village. The existence of Zhejiang Village also has a more general stimulant effect on the general development of the region. Furthermore, migrants have to pay substantial bribes to local officials and government agencies in the process of getting things done.⁴⁷ Lower-level governments thus were the most direct and biggest beneficiaries of the development of Zhejiang Village. It is not surprising that this strong convergence between the economic interests of migrant entrepreneurs and local governments led to resistance to law enforcement.

The discriminatory rules about migrants' licenses, and the interests of the upper-level government that they represent, must be

⁴⁶ See Liu Bingyi, *Liudong de Shimin* ["Floating 'City People'"] at 31, 6 QINCHUN [Youth] (1989).

⁴⁷ See XIANG, *supra* note 12, at 424-425.

understood in the general context of the tide of internal migration nationwide and the status of Beijing as the country's capital. Unlike a more ideologically committed totalitarian regime, the central Chinese government has become pragmatic over the period of economic reform, and stopped relying on despotic power and proletarian ideology to maintain its legitimacy. Instead, it chose to derive legitimacy from both economic development and social order.⁴⁸ These two goals, however, are not always consistent. This contradiction is exemplified in the government's attitude toward Zhejiang Village.

On the one hand, social order and stability are the paramount concerns of the Beijing municipal government. The creation of a space in Zhejiang Village that was not part of the sphere of control of the state made the municipal government fearful that it might lose power in this politically sensitive area.⁴⁹ It must be noted that this anxiety was not totally groundless. According to an official report, Zhejiang Village had the highest crime rate in the city, as criminal cases inside Zhejiang Village rose from dozens in 1983 to hundreds per year in 1994. Among arrested criminals in the Zhejiang Village area, migrants constituted 10 percent in 1983, 60 percent in 1991, and 91.8 percent in 1994.⁵⁰ Homicide, robbery, extortion, burglary, and drug trafficking were not uncommon.⁵¹ Because these are official statistics, provided by the government at the moment when it wanted to clean up the migrant enclave, the number might not reflect the real situation. Nonetheless, social order in the Village was undeniably worse than in other parts of the city.⁵² In the eyes of the Beijing municipal government, Zhejiang

⁴⁸ Pitman Potter, *Riding the Tiger: Legitimacy and Legal Culture in Post-Mao China*, 138 THE CHINA Q. at 325 (1994);

⁴⁹ In their studies, Xiang and Jeong refer to Zhejiang Village as a "non-state" space. See XIANG, *supra* note 12, and JEONG *supra* note 15.

⁵⁰ See Qingli Zhengdun Dahongmen Wailai Renkou Zhuju Gongzuo Zongjie [Summary Report on the Cleaning-up Campaign of the Migrant Settlement in Dahongmen Area] (Beijing Leadership Group Office for Migrant Management, 1996), in JEONG, *supra* note 15. The statistics are misleading in many senses, however. For example, in the statistics provided by the police, the number of suspects is often recorded as the number of legally convicted criminals; the statistics from some courts indicated that the true percentage of migrant criminals was actually much lower. In addition, the number of urban criminals provided by the police did not include white collar crime, which was almost exclusively conducted by official urban residents. See Shu-Kai Zhao, *Criminality and the Policing of Migrant Workers*, in THE CHINA J. 43 (2000), at 101. Further, statistics of migrant crime in official reports included criminals who had escaped from jails. This group was usually lumped in the category of "outsiders" (*waidiren*, presumably migrants). And those who committed crime but escaped from the scene were also assumed to be "outsiders" either by their non-local accents or dress and demeanor. See ZHANG, *supra* note 12.

⁵¹ See XIANG, *supra* note 12; ZHANG, *supra* note 12; and JEONG, *supra* note 15.

⁵² This perception came from migrants and locals living inside and outside the Village. Although there were informal social control institutions inside the Village, these informal institutions, for

Village was a major destabilizing factor in the capital city. Social control and stability were so important, especially at politically sensitive moments, that strict enforcement was justifiable, even at the expense of economic concerns.

On the other hand, the upper-level government also wanted a prosperous market economy. Through legal collusion, migrant entrepreneurs made substantial contributions to Beijing's prosperity. Rent paid to the locals, migrants' expenditures in the city, the revenue paid to the government in general, and the garments they manufactured and sold all contributed to the city's economy. Moreover, the efforts of migrant entrepreneurs stimulated and accelerated marketization, as they greatly increased the efficiency of the garment business by pioneering new forms of ownership, management and employment, not to mention providing role models for the rest of society for hard work and the sharing of market information with other places through their networks of fellow provincials.⁵³ Furthermore, Beijing citizens enjoyed the increased variety and low prices of garments made and sold by migrant entrepreneurs. Rigid enforcement of the law against migrants would damage this prosperous market and provoke complaints from Beijing residents. The municipal government thus faced a dilemma: whether to enforce the law requiring migrants to have legal licenses, or to allow legal collusion to continue to exist.

Lower-level governments took sides with the migrants, arguing that economic growth and prosperity, due in large part to migrants, was the true source of stability and social control. They claimed that only after the government had more economic resources could it reduce crime and restore social order more effectively. The true motive behind this argument was perhaps the tax, regulation fees, health fees, rent, and bribes received by local governments and their officials from migrants. The actual behavior of the local governments suggests this. For example, these governments sometimes helped migrants apply for temporary resident permits, shortening the application process and increasing office hours.⁵⁴ Local governments also invited migrants to

example, the migrant elite, could not work as well as the formal institutions. The elite would not take care of every dispute or fight inside the Village, and, as I mentioned earlier, the migrant elite and cliques might encourage fighting from time to time. *See supra* pages 168-169. Nonetheless, the social order has improved in recent years, and is not as bad as the official rhetoric depicts.

⁵³ See Xin He, *Legal Evasion as A Means of Development: A Case Study of Beijing Migrant Garment Business* (2000), (unpublished J.S.M. article, on file with the Stanford Law Library). *See also* DOROTHYJ. SOLINGER, *CONTESTING CITIZENSHIP IN URBAN CHINA: PEASANT MIGRANTS, THE STATE, AND THE LOGIC OF THE MARKET* (1999), at 145.

⁵⁴ *See, e.g.,* JEONG, *supra* note 15, at 174.

participate and invest in modernized garment marketplaces—a friendly gesture to migrants.⁵⁵ As Stoddard argued with regard to US-Mexico borderland policy, there was institutional support for admitting migrants, even though legislation and official policy was against it.⁵⁶

2. Winners and Losers of Sporadic Campaigns

It is in this context that sporadic campaigns are adopted as a compromise means of enforcing the law. They partially and incompletely address the concerns of both upper and lower levels of government. From the standpoint of the upper-level government, campaigns exert pressure on society and on migrants, reminding society that the law must be obeyed. They keep up a minimum pressure on persistent law-breakers like the illegal garment business. When social order is not a problem, the law remains dormant. When social disorder becomes intense and reaches a point which the upper-level government cannot tolerate, or when stability becomes vitally important during politically sensitive periods, the law is activated by means of a campaign. This prevents the situation from getting worse. From the standpoint of lower-level governments, this strategy is also acceptable. It allows the existence of legal collusion most of the time, so that local governments and local residents can enjoy the benefits brought by the migrants. Sporadic campaigns can affect the amount of legal collusion, but certainly do not eliminate it. Migrants and locals soon find new ways to profit from their convergence of interests after the campaign ends. Moreover, the sporadic campaign serves another function for locals: it keeps migrants conscious of the existence of the law, and that cooperation with the locals is indispensable. In this sense, the sporadic campaign actually reinforces the legal collusion relationship, and thus guarantees the benefits locals obtain from legal collusion.

Needless to say, the biggest beneficiaries of legal collusion and sporadic campaigns are those who make deals directly with migrants. For example, the SOSs, who rent their stalls or counters to migrants, receive rent from the migrants far in excess of what they could earn by themselves. Garment manufacturing enterprises benefit from renting official copies of their licenses to migrants. Local farmers who rent extra housing to the migrants augment their income. Local officials

⁵⁵ See XIANG, *supra* note 12; ZHANG, *supra* note 12; JEONG, *supra* note 15.

⁵⁶ See Ellwyn R. Stoddard, *Illegal Mexican Labor in the Borderlands: Institutionalized Support of an Unlawful Practice*, 19 PAC. SOC. REV. (1976).

also receive extra cash. Marketplace management companies see an increased volume of business, and benefit from tenants who are willing to pay extra if permits are not insisted on. During sporadic campaigns, they might lose some income for a month or two, but they are not punished for legal collusion. On the contrary, the sporadic campaigns remind migrants of the importance of protection by locals, and the bargaining power of locals in future collusion is further increased.

Even for ordinary citizens in Beijing, legal collusion and sporadic campaigns are not without merit. Developments in the migrant garment business solve the problem of garment shortages. The prosperous market provides Beijing citizens with more choice and lower prices. As consumers, they have no reason to dislike the more competitive market migrants help bring about. Furthermore, the existence of campaigns reminds registered citizens of their superior status in the city, in part pacifying their resentment toward migrants and reinforcing their complacency as urbanites.

The municipal government also gains something. Migrants bring a prosperous garment market to Beijing, and this increases the popularity of the government. The municipal government also can collect some revenue indirectly from migrants. While migrants do not pay taxes or regulation fees directly to the municipal government, part of the rent they pay to their collaborating locals will be passed on to the government. And part of the revenue the district governments collect also has to be passed on to the municipal government.

The biggest losers from campaigns are of course the migrants. Even though they pay more than the locals at every juncture, their existence in the city is permanently precarious, since the state may initiate a campaign whenever it feels necessary.

The sporadic campaign, therefore, may be regarded as a deliberate tactic of upper and lower levels of governments to maximize their own interests at the expense of migrants. The upper-level governments have created a social condition in which legal collusion can be expected. The degree of legal collusion is controlled by the sporadic campaign strategy: this prevents collusion from getting worse, but there are reasons—for instance, economic benefits that the locals get from the migrants—not to let it get better. The upper level governments thus act as a kind of accomplice to locals in exploiting migrants.

IV. CONCLUSIONS AND IMPLICATIONS

This article has explored why sporadic campaigns were adopted by the state to combat migrants in Zhejiang Village. Key to this analysis is the fact that the state has an interest in controlling but not eliminating migrants. Interests within the state are not always consistent, and long periods of lax enforcement punctuated by sporadic campaigns satisfy the needs of both upper- and lower-level governments. Excessive regulations and campaigns are wielded by the upper-level governments to maintain control over society, while lower-level governments and local people are allowed to extract benefits from migrants. Consequently, keeping migrants illegal prevents more people from getting into the city, and the situation from getting worse, while inconsistent enforcement keeps the situation from getting 'better' and depriving local governments and local people from an important source of income. The overall strategy therefore takes advantage of migrants and the migrant economy, while still restraining the greediness of the state.⁵⁷ Stated differently, the sporadic campaign leaves a certain space for legal collusion to survive in society, but the reason for allowing this survival is that legal collusion and migrants are useful to locals and local governments. Hence there is a kind of equilibrium between legal enforcement and legal collusion.

The story of Zhejiang Village provides us with a platform to reflect on the impact of law on Chinese society. Similar to parties who bargain in the shadow of law while resolving disputes outside courts,⁵⁸ participants in legal collusion bargain to benefit themselves by evading law. Under the circumstances in Zhejiang Village, law is not fully effective: the original formal intention of using the law to restrict migration flounders. Nor is the law totally ineffective: its existence and implementation affect the behavior of everyone, but not necessarily in predictable ways. For example, if no law restricted the migrant

⁵⁷ Students of China use the terms predatory and developmental states to describe the relationship between local governments and local economic activities. In predatory states, officials mainly utilize their position to extract unproductive rents from producers and entrepreneurs while not participating in business either directly or indirectly. In developmental states, officials indirectly participate in the economy, financing projects and infrastructure, promoting the local economy with entities outside the localities. This case suggests that the governments in Beijing are more predatory than developmental. For the detailed discussion of predatory and developmental state, see Marc Blecher & Vivienne Shue, *Into Leather: State-led Development and the Private Sector in Xinji*, THE CHINA Q. 174 (2001), at 368.

⁵⁸ See Robert Mnookin & Lewis Kornhauser, *Bargaining in the Shadow of the Law: The Case of Divorce*, 88 YALE L.J. 950 (1979).

economy, migrants would not need to cooperate with locals; as it stands now, the intensity of legal enforcement sets the amount of rent. The more intense the enforcement of law, the more likely that collaboration will be detected, the higher the risk of protecting migrants, and the higher the rent.

State law nonetheless permeates society, during the process of cooperation between migrants and locals, even though the law is largely evaded.⁵⁹ This article therefore suggests that law affects China's social order in an indirect and unconscious way. Many political scientists, assuming the centrality of law or the state, look on laws as an effective, direct means of social control. This has not gone unchallenged. For example, Ellickson argued that within a close-knit group with mutual reliance on one another, people employ informal norms, rather than the law, to solve disputes.⁶⁰ Ellickson reminds us of the limitation of law in maintaining social order and solving disputes; the Zhejiang Village case provides a new perspective to look at the relation between law and order. While the Village appears to be a close-knit community where state law is largely irrelevant, law continues to exert influence invisibly as the foundation of legal collusion. The law resides in the negotiation between migrants and locals, in the way in which migrant entrepreneurs sell their garments, and in the housing compounds where migrants live their precarious lives. Even though the law does not directly achieve its goal of controlling society—for example, in preventing migrants from entering the city—it indirectly, gradually, or even unconsciously affects people's behavior. Even the unobserved law penetrates to the bottom of society—to the individual, at the grassroots level.

In this sense, the law has specific functions in maintaining a hierarchical social order, despite its ineffectiveness at first glance. Because of the law, the traditionally advantageous position of locals is confirmed; migrants, on the other hand, continue to suffer. The law is ultimately used as an instrument to maintain a hierarchical order, through campaigns and legal collusion. It strengthens an existing hierarchical relationship, reinforces the division between migrants and locals, and reinforces the structure of social order. The law is not just a direct, naked instrument for the state to achieve its goal. Instead, it has become a very sophisticated regime in balancing various interests and maintaining social order.

⁵⁹ A similar question was raised by Suli. See SU LI, FAZHI JI QI BENTU ZIYUAN [THE RULE OF LAW AND ITS LOCAL RESOURCES], (1996) at 48-49.

⁶⁰ See ROBERT C. ELLICKSON, ORDER WITHOUT LAW: HOW NEIGHBORS SETTLE DISPUTES (1991).

Finally, this case study sheds light on why the law in China has been generally perceived as ineffective. It suggests that collaboration among local officials, local governments, and entrepreneurs, as a result of legal collusion, imposes a significant barrier preventing the state from fully enforcing the law.⁶¹ As we saw, the license requirements were designed, at least in part, to protect the local interest. They were supposed to prevent migrants from getting into the city, thus setting aside more resources and opportunities for registered urban citizens. Ironically, locals became accomplices in legal collusion, helping migrants evade the requirements. Legal enforcement thus faced resistance not only from migrants, but also from locals. The various economic alliances in society constitute a barrier to the state, hindering its alleged goal of establishing an effective legal system.

Local governments and enforcement agencies to some extent sustain the practice of legal collusion. The state may not really want to, or may not be able to, enforce the law to the satisfaction of the different interests inside bureaucracies. This case study thus challenges some formulations that correlate commercialism or urbanization with the presence of democratic institutions with constrained administrative power. Some assert that a rich China will necessarily become more democratic; others maintain that the potential for rule of law to emerge from the current system already exists.⁶² Even if these formulations and assertions are proved true in the very long run, the story of Zhejiang Village paints a portrait of the ugly time in between.

⁶¹ For a similar view based on theoretical speculation see Cui Zhiyuan, "Hunhe Xianfa" Dui Zhongguo Zhengzhi De San Ceng Fenxi [A Triple Analysis to Chinese Politics Based on a "Mixed Constitution"] in ZHENGFU YU SHICHANG [THE MARKET AND THE GOVERNMENT] 181-185 (Hu Angang and Wang Shaoguang, eds., 2000).

⁶² Henry S. Rowen, *The Short March: China's Road to Democracy*, 45 NAT'L INTEREST, at 61-70 (1996); Minxin Pei, *Is China Democratizing?*, 1 FOREIGN AFFAIRS, at 68-82 (1998). Quoted in STANLEY B. LUBMAN, *BIRD IN A CAGE: LEGAL REFORM IN CHINA AFTER MAO* (Stanford University Press 1999).

