

# State and labor in China, 1978–2018

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## Abstract

China's reintegration into global capitalism has greatly transformed migration patterns and labor relations since the late 1970s. This article focuses on worker activism in this transformation. It shows that the dynamic interactions between worker mobilization and government reaction have continued to shape the forms and outcomes of labor contention. Aggrieved workers have used legal and extralegal strategies to defend their rights and interests. In response, from the early 2000s, the leadership has sought to preserve social stability by raising minimum wages, extending social insurance coverage, and expanding access to grievance redress. But freedom of association remains severely restricted. Labor nongovernmental organizations and more recently a new generation of left-wing university students have attempted to fill the representation gap to support workers in struggle. State and labor relations remain contentious in Chinese development.

## 1 | INTRODUCTION

Under China's decollectivization policy in the late 1970s, rural income increased with improved productivity following the contraction of farmland to individual households. By the mid-1980s, however, the growth momentum in the countryside began to decline. With much of the bank loans and state subsidies diminished as a result of the urban-biased development, rural entrepreneurship was hit hard. Out-migration coupled with the opening of the domestic market to the world has seen Chinese workers—including hundreds of millions of internal migrants—rapidly drawn into global manufacturing, services, and construction, turning the country into the “workshop of the world.” This essay assesses the changing relationship between the state, labor, and capital over the past four decades.

The six main sections of the essay are organized as follows. First, it reviews China's economic transition and its impact on the working class by focusing on the brief attempt made by workers to organize independent unions in 1989. Second, it looks into the collective labor resistance against layoffs and privatization in the urban industrial sector. Simultaneously, a young cohort of rural migrants

has grown to become the mainstay of the new manufacturing workforce. Discrimination and exploitation are rampant in “sweatshops,” generating waves of strikes and protests. Third, it traces the state's attempts at prolabor legislation in response to rising social unrest, and yet the problem of worker representation remains largely unresolved. Fourth, it turns to the plight of agency workers, also known as dispatch workers, who had long been excluded from the legalistic regulatory framework before 2008. Despite, or because of, the tightening of contract labor requirements, coupled with the rising cost of labor, the use and abuse of dispatch labor has exploded, prompting another round of legal battles. Fifth, it focuses on Chinese trade union reforms and the attempts, with very limited success, at collective bargaining at the workplace level. Discontented workers have bypassed management-dominated unions to fight on their own, sometimes winning the support from grassroots labor organizations. Finally, the article concludes with reflections on workers' struggles and future research in President Xi Jinping's era.

## 2 | CONTENTIOUS POLITICS AND INDEPENDENT UNIONISM IN 1989

During the early 1980s, when Chinese urban reforms began, economic livelihood was a major concern among working class people. In Beijing, between 1986 and 1988, workers and residents shouldered rising costs of living as a result of bureaucratic corruption and runaway inflation. At the workplace, party cadres and managers favored their own families and relatives with allocation of housing and other benefits. By contrast, ordinary workers had to tolerate living in cramped apartments, without the prospects of moving up or making better lives. In the sphere of work and employment, with the reintroduction of capitalist principles of production, labor is commodified. Factory directors rationalized management by pitting workers against each other to increase outputs. Grievances over unequal pay and unfair work, among other specific disputes centering on job responsibilities, labor discipline, and women workers' rights, had accumulated (Rofel, 1989). A shoe factory worker told a journalist, “I cannot afford a decent life so naturally there is anger in me....When I hear our leaders speak of ‘reform,’ I know that means the price of food is about to increase....[Inflation and corruption make] rich men of party cadres and leave the masses behind” (cited in Walder, 1989, p. 34).

In the spring of 1989, emboldened by the university students' call for democracy and liberty, workers likewise demanded that their dictator-like directors step down. Beijing Workers' Autonomous Federation, the worker-led independent organization, called for price stabilization, opposition to political oligarchy, and freedom of association (Walder & Gong, 1993, pp. 12, 17). Importantly, sympathetic members of the only official trade union federation also took to the street to support the self-organized workers and the protesting students. While workers were largely excluded from student organizations during April and May 1989, the emerging unity between worker and student activists clearly presented a threat to the regime. From the eyes of the government, the “political turmoil” was the largest to date since the birth of the People's Republic of China in 1949 (Saich, 1990, p. 199).

Following the bloody crackdown of the June Fourth 1989 Movement in Tiananmen Square, the Beijing leaders took both repressive and conciliatory approaches to put things in order. Surveillance at the workplace and in the neighborhood has been strengthened in the hands of public security, government-run trade unions, and neighborhood committees (Lee, 2010; Lee & Hsing, 2010). At the same time, the reformers established new mechanisms to guarantee workers' basic rights to grievance redress, while speeding up economic reform to attract investment and secure export markets to boost employment and growth (Gallagher, 2005). Contradictions between economic liberalization and rights protections have nevertheless built up, as discussed below.

### 3 | LABOR PROTESTS, STRIKES, AND ARBITRATED DISPUTES

With the quickening pace of enterprise restructuring, in 1993 the government promulgated the Regulations on Handling Labor Disputes in Enterprises, which superseded the 1987 Provisional Regulations and extended access to grievance resolution to rural migrant employees. The 1987 Provisional Regulations laid down a three-stage process of mediation, arbitration, and litigation to give urban state workers and employers “an avenue to enforce legal rights directly through formal proceedings” (Ho, 2003, p. 3). The context was that wage differentiation between managers and workers had been widening, and conflicts centering on intensification of work as well as staff appraisal arose when the state enterprises increasingly turned to higher revenues and productivity in market transition. Grievances would first be handled by the workplace-based labor dispute mediation committees before proceeding to district-level arbitration and, if necessary, civil suit.

But enterprise-led mediation sessions were rendered less and less effective in settling critical labor disputes. By 2002, in the midst of privatization and reorganization of state firms, over 60 million urban workers had been laid off. That is, there was “a 44 percent reduction of the 1993 state sector workforce within a 10-year period” (Hurst, 2009, p. 16). State-sector jobs as a share of urban employment fell sharply from “76 percent in 1995 to 41 percent in 2000 to only 27 percent in 2005” (Park & Cai, 2011, p. 17). Aggrieved pensioners took to the street to make desperate claims to health and retirement benefits, while laid-off workers fought for economic compensation or reinstatement (Cai, 2006; Pillion, 2009; Solinger, 2009). Arrests, detention, and imprisonment of worker leaders were frequent in the “rust belt” in northeastern industrial regions (Lee, 2007).

In the fast growing nonstate industrial sector, where rural migrants were hired in large numbers, dispute resolution mechanisms and trade union organizations were almost completely absent, leaving them weakly protected. From factories to offices to construction sites, nonpayment or underpayment of wages and benefits, illegal dismissals, and occupational injuries and diseases were rampant, with some workers, in extremis, committing suicide or murder, as they struggled to defend their rights. The others staged collective protests and strikes to make their voices heard (Chan, 2001; Chan, 2010; Fan, 2018; Friedman, 2014; Lee, 1998; Pun, 2005; Swider, 2015). In a wider society, rural migrant workers, in comparison with their urban counterparts, lacked full citizenship rights in the cities including public health care, housing, and access to government education for their children (Solinger, 1999; Whyte, 2010). While some local governments have sought to reduce the inequalities structured by urban/rural household registration status, progress has been slow and uneven.

In understanding labor activism, as early as 1975, the provision for the “right to strike” was incorporated into the amended Constitution of the People's Republic of China. The Constitution enacted in 1978 also stipulates that citizens have “freedom of strike” and other civil rights. The “freedom of strike” stipulation, however, was removed from the 1982 Constitution, showing the tightening of the Party state over its rule in the wake of a wave of democratic movement in Beijing, and former Eastern Europe, in the late 1970s (Chang & Cooke, 2015). Labor and social discontents have nevertheless been growing with massive restructuring of the labor market. The total number of “mass incidents”—including strikes, protests, riots, demonstrations, collective petitions, and other forms of civil unrest—stood at 8,700 in 1993, the first year for which official data were publicly available. It increased to 32,000 in 1999 and surpassed 58,000 in 2003, indicating widespread social and class cleavages in the deepening market reforms, and coupling with lack of effective mechanisms for conflict resolution (Tanner, 2005, p. 2). The documented mass incidents ranged widely from unpaid wages to land seizures, involving workers, farmers, and other victims who demonstrated resistance to

rights encroachment by targeting authority, employers, or other groups. In 2005, the number increased by 6.6% over 2004 to 87,000, that is, an average of 240 incidents each day (*Xinhua*, 2006). While the Ministry of Public Security has since ceased to release annual data relating to mass protests around the country, anecdotal evidence and unofficial statistics showed the proliferation of public order disturbances (Crothall, 2018; Elfstrom, 2017).<sup>1</sup>

By passing laws between 1987 and 1993, when labor relations were getting more complex with the diversification of ownership and forms of employment, the government created and further developed a legally mandated system for arbitration of labor disputes. The disputing parties can go to local arbitration committees to file complaints within a valid statutory time frame. The first national labor law was promulgated in 1994 and came into force on January 1, 1995. In 1996, 48,121 labor disputes (including individual and collective cases<sup>2</sup>) involving 189,120 persons nationwide were accepted for arbitration, up 45% from a year ago (Sun, 2000, p. 168). The incidence of arbitrated labor disputes, along with wildcat strikes and protests,<sup>3</sup> has been growing rapidly. In the global economic crisis of 2008, when tens of millions of workers were laid off, the number of cases skyrocketed to 693,465—nearly double from 1 year previously—involving more than 1.2 million laborers across the country. Following a brief decline, since 2011, labor dispute cases have shot up annually, reaching an unprecedented 828,410 cases in 2016 (*China Labour Statistical Yearbook 2017*, 2018, pp. 348–49). Cases concerning unpaid wages (basic wages and overtime premiums) and social insurance remain most prevalent nationally, followed with disputes about termination, severance, and other issues (such as unpaid compensations of occupational injuries and diseases). The number and variety of labor disputes will be likely to rise.

In her book, *Authoritarian Legality in China*, Mary Gallagher (2017) aptly analyzes the “high standards, self enforcement” model. The state sets high standards<sup>4</sup> for workers' rights, but rights-claiming workers must act as “firefighters” who self-enforce their rights by sounding the “fire alarm” at labor bureaus, petition offices, and courts to alert higher-up officials to uphold high labor standards. If workers sound the alarm by filing cases and the government consistently enforces worker protections, employers may anticipate the risk of a dispute and avoid the problem. But if enforcement is lax and punishment is mild, employers may ignore the letter and spirit of the law. Local governments often prioritize attracting investment rather than enforcing laws and regulations. A persistent pattern is that desperate workers sound the fire alarm, in some cases half burned alive, yet serious problems such as nonpayment or underpayment of wages and benefits remain unresolved.

“Using the law as a weapon” remains burdensome, despite impressive legal reforms including the provision of government-operated legal aid services (Chen, 2004). When either party is unsatisfied with the arbitral award, the disputant can bring the case to the district level court. If the outcome is not accepted, the litigant can appeal the verdict to the intermediate court. The ruling by the intermediate court is final. This formal legal procedure is known as “one arbitration and two lawsuits.” For working people, particularly low-income rural migrants, access to affordable and effective legal representation is still hard to come by. “Since 2007, workers have become less likely to ‘totally win’ and more likely to only ‘partially win’ in labor arbitration,” indicating the institutional barriers such as the time and costs needed to go through the legal processes (Halegua, 2016, p. 1).

In handling collective lawsuits stemming from labor disputes, judges often insist that cases be filed individually. Feng Chen and Xin Xu have shown how this individualization of collective labor actions fragments and isolates plaintiffs, thereby robbing workers of their strength of unity. For example, in 2009, a court in Dongguan city turned 39 collective disputes, involving groups ranging from 10 to 988 people, into 4,167 individual cases (Chen & Xu, 2012, p. 94). This judicial intervention weakened organized labor forces at the door of the court. In *Against the Law*, Ching Kwan Lee (2007, p. 260) reflects that plaintiffs “do not necessarily see the law or the courts as a neutral or

empowering institution in their fight against official corruption and abuse of power." Still, without better alternatives, "many continue working through and around the law and its related trappings in the state apparatus." Chen and Gallagher (2018, p. 1033) also argue that "the atomizing effects of court procedures and legislation" has partially restrained "the development of a labor movement" in China. Disgruntled workers oscillate between judicial and extrajudicial process of conflict resolution, drawing attention from the government, media, and the concerned public.

## 4 | PROLABOR REFORMS AND THE LIMITATIONS

With China's further liberalization and accession to the World Trade Organization, between 2002 and 2012, the Beijing leaders introduced a series of measures to boost governance against the backdrop of rising social instability and economic inequality (Howell & Pringle, 2018). Effective from March 1, 2004, under the Provision on Minimum Wages, provincial and lower-level governments were required to review statutory minimum wage levels under their jurisdiction at least once every 2 years. Between 2003 and 2012, real wages for rural migrant workers rose 2.5 times, with a 10.8% annual increase (Naughton, 2014, p. 21). Cai and Wang (2011) explain that "a younger overall demographic, stronger trade union involvement and the gradual approach towards the Lewis turning point in economic development (when abundant low cost supplies of labor begin to run out) have all contributed to wage rises in China." But the level of rural migrant workers' wage rates remains consistently *below* the average in the urban labor market (Selden & Wu, 2011).

Starting in 2005, legislators drafted a new labor law in an attempt to enforce higher labor standards and more inclusive policies for Chinese workers. Looking back, the 1995 Labor Law of the People's Republic of China formulates basic rights for all worker-citizens. However, it also largely did away with permanent employment relationships by establishing a new system under which virtually all workers would be hired based on limited-duration contracts, thus heightening job insecurity. Moreover, weak enforcement of law has been an acute problem as entrepreneurial local officials bent laws and regulations for their own gain. Worker-led actions that targeted employers, and on occasion government officials, were frequently provoked. Observers (Elfstrom & Kuruvilla, 2014) documented two types of labor actions. "Defensive actions" refer to workers' demand for the basic provisions stipulated in the labor laws and regulations, such as minimum wages, overtime premiums, and severance pay. "Offensive actions" characterize workers' call for better pay and benefits above the legal standards. As capital-labor tensions explode, the Beijing leadership—particularly the pro-labor element—feels the need to speed up the legislative effort.

In March 2006, during the 1-month public consultation of the draft labor law, 191,849 comments were received from legal scholars, academics, lawyers, business associations, labor rights organizations, and other stakeholders. "This number," highlighted by Gallagher and Dong (2011, p. 36), "far exceeded the comments received about other important and controversial laws." On June 29, 2007, the government passed the Labor Contract Law after making successive amendments to accommodate competing demands from groups of various interests. Legal specialists (Cooney, Biddulph, & Zhu, 2013; Gallagher, Giles, Park, & Wang, 2015; Ngok, 2008) widely agree that the Labor Contract Law, coming into force on January 1, 2008, is the most significant piece of Chinese labor law reform in more than a decade.

Alongside formal legal reforms and development, since 2006, the government has revived mediation as a proactive strategy to minimize open confrontations between adversaries. At the heart of the matter is not legal impartiality or fairness but expediency to assure dispute settlement and prevent public protest. Before arbitration begins, arbitrators must visit workplaces to conduct mediation. If

pre-arbitration intervention fails, arbitrators pressurize disputants to reconcile the case-handling process in the form of mediation. Finally, a mediation procedure following arbitration would be quickly set up to prevent an appeal to the court. At every stage, workers are pressed to settle cases promptly. Arbitrators, lawyers, judges, and trade union officials work to persuade workers that “the mediated outcome is the best possible result,” even when the conciliated compensation amount offered is far lower than what a court might award (Zhuang & Chen, 2015, p. 399). The overarching goal for the government is to use its discretionary power to reach resolution as quickly as possible (Liebman, 2014; Su & He, 2010). The “success rate of mediation” has become a factor in the annual performance assessment of labor officials and judges, directly linked to payment of bonus and opportunity for promotion. Unfortunately, the success rate is measured not by the justness of case outcomes or by the amount of back pay and severance pay awarded to workers, but by the swiftness with which cases are closed.

Lee and Zhang (2013, p. 1486) have highlighted that, in “buying stability” by “dishing out cash payments or other material benefits in exchange for compliance,” the government also undercuts a wider reform and worker mobilization to influence government policies. Managerial concessions and state compensation offers aside, as Xi Chen (2012) points out in his book-length studies of “contentious authoritarianism,” significant coercion and repression are often involved in state efforts to combat labor challenges. Deng and O'Brien (2013) focus on “relational repression” as the social control of protest. By pressuring families and relatives, friends, and the significant others of target protesters, the authorities manipulate “social ties” and “feelings of affection” to defuse collective protest before escalation. This labor-intensive process of “stability maintenance” involves an irreducible amount of psychological pressure inflicted on those who are seeking justice.

In short, the clashing interests and intentions *within* and *across* the many elements in the “Chinese state” are complex. Limited economic concessions aside, the government has facilitated both state-owned and non-state enterprises to meet their human resources needs in a competitive market, often at the sacrifice of workers' rights and interests. Big and small businesses, in China as in many other countries, have actively shed employment through labor dispatch and other forms of subcontracting, to which we now turn.

## 5 | DISPATCH WORKERS' RIGHTS ENTITLEMENT AND INFRINGEMENT

Subcontracting—the practice of using intermediaries to contract workers, whether through agencies or other multilayered contracting—is raising new challenges over legal protections and corporate responsibility. A government survey estimated that by June 2011—the latest date for which statistics are available—there were 37 million “dispatch workers” in the country, accounting for 13.1% of the total workforce (All-China Federation of Trade Unions, 2012, p. 23).<sup>5</sup> A little over half (52.6%) of the sampled dispatch workers were rural migrants, while the others were workers with urban household registration. By law, for dispatch workers, the employing entity is an agency rather than the company where they work. In this sense, the legalization of labor subcontracting allows the “user of the work”—the company that actually directs workers' day-to-day tasks—to be separate from the “employer of the person” with which workers have their employment contracts (Huang, 2017a, 2017b). This arrangement provides a powerful shield for the user firm against dispatch workers' claims to receive the same levels of wages and social insurance benefits as regular workers.

Employers are incentivized to buy labor services from outside recruiters, often at lower rates, instead of employing them directly (Huang, 2017c, p. 8). The opening of the first such agencies by

local governments was intended to create temporary jobs by deploying laid-off workers following successive waves of bankruptcy, mergers, and acquisitions, as well as restructuring of state industries (Xu, 2014). Sarah Swider (2017, p. 33) elaborates, for subcontract workers, that their “short-term contracts” will “diminish their power” and “their legal employer is an employment agency rather than the company where they work, making it more difficult for them to hold their de facto employer accountable.”

A 2011 off-site survey of 483 regular and agency workers at five automotive joint ventures (in four cities including Guangzhou, Shanghai, Tianjin, and Yantai) showed that the “gap in wages” between the regular and contingent laborers was small. The enterprises were reportedly interested to “keep down the turnover rate” and to instill loyalty in the workplace by paying “high bonuses” to all, thus minimizing the wage differences between the two worker groups (Chen & Chan, 2018, p. 105). By contrast, Lu Zhang, author of *Inside China's Automobile Factories*, found that temporary workers (including dispatch workers recruited from agencies and “student interns” from vocational schools)—who constituted 33% to 60% of the studied automobile plants' production workers in 2011—were paid only half to two-thirds the wages of regular workers, even when they “had to shoulder heavier workloads and perform less desirable tasks” (Zhang, 2015, p. 150).

In 2014, against the rising costs in a slowing economy, an ILO study (Liu, 2014) showed the systemic use of subcontract labor in Chinese manufacturing, construction, and services sectors (covering a wide range of occupations in logistics and transportation, hotel and catering management, postal and telecommunications services, and property maintenance services such as cleaning and security). In 2016 and 2017, thousands of dispatch workers at the Sino-German car giant FAW-Volkswagen (Changchun) staged a series of protests. Their protests were over their unequal treatment in terms of pay compared with directly employed counterparts at the company. After staging waves of protests over years of unequal pay, and during which three worker representatives were arrested for “gathering crowds to disrupt public order,” the automaker offered them employee status. However, they soon found their basic salary was 1,762 yuan a month—almost 1,000 yuan less than their coworkers, prompting a new wave of worker actions in September and October 2018 (China Labour Bulletin, 2018; Zhang, 2018). Labor force dualism is a source of workers' discontents (So, 2014).

In consumer electronics manufacturing, the offer of “signing bonuses” (equivalent to a double or even triple of the monthly basic wage) to new recruits after the completion of first or second month of employment is a corporate strategy to cope with seasonable fluctuations in demands. Agencies also pay bonuses to quickly attract students and other job-seekers. But there have been reports of agencies who refused to give employees the bonuses they were promised.<sup>6</sup> In extreme cases, “suicides” at two researched electronics suppliers were “linked to disputes over income withheld by recruiters,” according to a collaborative study of the Economic Rights Institute and Electronics Watch (2018). Clearly, the suppliers have leveraged labor subcontracting to increase their own profits and organizational flexibility, while shifting the risk of loss to individual workers.

Will the government, particularly the trade unions, social security departments, and civil courts, take firmer actions to protect precarious workers to ensure sustainable growth? The Supreme People's Court open-access database, China Judgements Online, shows the marked increase of lawsuits over “dispatch work” in basic level courts: from 59 cases in 2012 to 1,255 cases in 2014, followed by a slight decline to 1,190 in 2015.<sup>7</sup> One documented case concerned a steel piping dispatch worker, who demanded that he should receive the same pay for doing the same work as other workers. The court verdict read: “Equal work, equal pay is a basic principle of our nation's labor laws. However, equal work refers not just to the same kind of work, but also to equal labor ability, skill, and equal results and so on. Those issues are not within the capacity of the court to determine.” In Philip

Huang's (2017a, p. 266) critical analysis, the court declared in effect that "portion of the text of the Labor Contract Law to be empty words that cannot be enforced in actual practice." The dispatch worker's claim for equal pay was rejected.

Pro-labor legislators promulgated on March 1, 2014 that within the next 2 years, enterprises would be required to lower the proportion of dispatch workers to meet the legal limit of no more than 10% of each company's workforce. As of February 29, 2016, the transitional period expired. The Chinese Academy of Labor and Social Security research team found that at state-owned China Post (which manages the national postal services), the number of dispatch workers was sharply reduced from 461,300 in 2013 to 180,500 in 2015. Moreover, at Agricultural Bank of China, the proportion of dispatch labor was cut by more than two-thirds from 34,800 to 11,200. The January 2017 government news (Miao, 2017), however, did not address or disclose the overuse, and abuse, of dispatch workers in other state-owned and nonstate companies.

Feng Xiaojun, a member of the government investigation team and a doctoral candidate, provided additional details in her analysis (Feng, 2019). To meet the 10% cap, some enterprises have converted dispatch workers into regular employees (the pathway of formalization), while the others (mis-)classified dispatch workers into "outsourced workers" (a shady practice dubbed as "actual labor dispatch, disguised as labor outsourcing"). In this "cat-and-mouse game," the user firm seeks to maximize its own interests in flexibility to downsize or recruit, cut costs, and circumvent the law.

## 6 | TRADE UNIONS, GRASSROOTS LABOR ORGANIZATIONS, AND UNIVERSITY STUDENT ACTIVISTS

President Xi Jinping, who came to power in 2013, continues to search for mechanisms to resolve labor conflicts. The All-China Federation of Trade Unions (ACFTU), the country's only official trade union organization, is tasked to preempt the development of independent unions. Under the Chinese Trade Union Law, all types of enterprises with 25 employees or more are supposed to have "basic-level trade union committees" on the shop floors. An enterprise union shall be approved by the next higher level trade union. By the end of 2016, there were 2.8 million enterprise-level trade unions with more than 302 million registered members throughout the nation, making China the world's largest unionized workforce (*China Labour Statistical Yearbook 2017*, 2018, pp. 348–49). However, despite some experiments on state-guided direct elections, most of the unions are tightly controlled in the hands of senior management rather than rank-and-file workers (Howell, 2008; Hui & Chan, 2015; Pringle, 2011).

Workers and staffs in Pearl River Delta industrial regions in South China had attempted to reclaim their unions. In 2004–2005, "technical professionals" at the Japanese-owned cell phone maker Uniden in Shenzhen city formed "a twelve-member negotiation team" to bargain with management to set up a representative union. They received initial success before quickly succumbing to managerial power (Chan, 2010, p. 42). In 2010, 1,800 workers and student interns at the Honda autoparts assembly plant in Foshan city went on strike to reelect their company union. They were disappointed, however, that the discredited factory union chair remained head of a partially reformed union and the two "elected" vice-chairs were top-level managers, reflecting continued managerial control (Butollo & ten Brink, 2012; Chan & Hui, 2014; Lyddon, Cao, Meng, & Lu, 2015). In 2014, at Yue Yuen the world's largest footwear contractor, a factory-wide strike involving over 40,000 workers in Dongguan city had successfully pressured management to initiate union reforms, although the participation of workers in the decision-making process has been extremely limited (Ness, 2016;



Schmalz, Sommer, & Xu, 2017). The power between labor and management at the workplace level remains highly imbalanced.

Institutionally, the Party-led centralized union federation continues to monopolize worker representation across all levels. But a new generation of young migrants (officially defined as those who were born in 1980 and after), who arguably possesses a stronger organizing capacity with a mastery of mobile communications technologies than their predecessors, has bypassed state-controlled and management-dominated unions to demand higher wages and better conditions. Foxconn Technology Group, the world's largest electronics supplier, has reported waves of employee suicides, riots, and protests at its megafactories in coastal and interior China since 2010. As a result, Foxconn was compelled to hold "union elections" to improve communications with its million-strong work force (Chan, Pun, & Selden, 2013, 2016).

Significantly, the Yantian International Container Terminal trade union has "developed a system of annual collective bargaining" after the 2007 strike, as detailed by Tim Pringle and Quan Meng in their long-term research in Shenzhen through 2013 (Pringle & Meng, 2018, p. 1053). The elected union representatives serve dockworkers' interests to negotiate with management on a regular, not one-off, basis.<sup>8</sup> One critical factor is the militancy of crane operators, who are middle-aged male rural migrants with low turnover, displaying a high degree of bargaining power at one of the busiest ports in the capital-intensive sector in South China. The effectiveness of workplace trade unionism is conditional to the dynamic process wherein "workers' structural power was bent into an acceptable form of associational power" under the supervision of the local union (Pringle & Meng, 2018, p. 1073).

On the whole, representative enterprise-level trade union organization is very rare in China (Friedman, 2014; Pringle, 2011). Filling the "representation void," since the mid-1990s, labor organizations from cross-border Hong Kong and within the mainland have emerged (Kuruvilla, 2018, p. 1020). These nongovernmental labor groups, comprising workers, social workers, academics, cause lawyers, and other concerned individuals, have provided social and cultural services, legal consultations, leadership training, and rights awareness workshops to primarily rural migrant workers. The others also experimented with policy advocacy, workers' surveys, and collective bargaining in the workshops or "workers' centers" (Chan, 2013; Xu, 2013). Some have formally registered with the Ministry of Civil Affairs, while the others have gone underground.<sup>9</sup> The precise number of labor nongovernmental organizations (NGOs) across China is not known, with estimations ranging from 72 to 100 in 2010–2011 (Fu, 2017, p. 506; Howell & Pringle, 2018, p. 12).

Specifically, social movement-oriented NGOs seek to organize workers in collective contention and mobilization (Chen & Yang, 2017; Froissart, 2018). "To lower the cost of coordinating contention in a repressive state," Diana Fu details how labor organizers coached workers to take individual forms of activism, rather than collective actions, such as staging a "suicide show" to make urgent appeals (Fu, 2017, p. 516). Impressively, "disguised collective action" is a tactical innovation for rights groups to address the critical problem of organizational survival. In the process, labor organization leaders offered much-needed support to injured workers at the backstage, framed the problems, and suggested disruptive strategies to press for economic compensations. Collective consciousness was fostered when individual worker activists turned themselves to become "volunteers" (that is, "members") to support others in defending their rights.

Debates (Franceschini, 2014; Lee & Shen, 2011; Pringle, 2018) over the effectiveness of labor NGOs in expanding worker's power in China will likely carry on. Franceschini and Lin (2018) point out that many NGOs are resilient, who are serving workers' diverse needs by adapting to the changing economic and political contexts. Effective from January 1, 2017, with the passage of the Law on the Management of Overseas Nongovernmental Organizations' Activities within Mainland China (also known as "the Foreign NGO Law"), the oversight of Hong Kong and international NGOs

by the Chinese authorities has strengthened. In fact, the Ministry of Public Security now reserves the right to “manage” foreign NGOs on the mainland.

Fundamentally, the ruling party and employers perceive a well-functioning workers' union, and the growth of civil society (within which labor organizing sits), as threatening. The shutdown of “illegal” labor NGOs in Guangdong Province in 2015, and the heightened surveillance and massive arrest of worker activists in recent years, has dampened the development of worker-led and worker-student networks (Chan, 2018; Franceschini & Nesossi, 2018).

Since July 2018 the repression of Jasic Technology (Shenzhen) workers and their supporters has garnered attention at home and abroad (Chan, 2019; Friedman, 2018). By January 2019, three Jasic workers who exercised their legal rights to set up a union, along with a former worker, had been detained for 6 months. Denied visits by lawyers and families, they remain in custody in Shenzhen as of this writing, charged with gathering a crowd to disrupt social order. Jasic Workers Support Group, comprising mainly university students and recent graduates as well as workers across China, has been calling for the release of detained workers and supporters.<sup>10</sup> Amid a deepening clamp down, four student leaders—who had “disappeared” since August—were forced to “confess” on camera their participation in an “illegal organization” to campaign for labor rights. Moreover, Marxist student organizations at top Chinese universities were either forcibly restructured or eventually shut down. In Au's (2019, p. 91) sharp analysis, “though Xi Jinping continues to demand the people learn from Marxism-Leninism and Mao's thought, that state continues to crack down on any independent and collective effort at seriously studying left classics — and to crack down even harder when these efforts carry an aspiration to sympathize with working people.” Evidence suggests that the coordinated months-long national crackdown on Jasic mobilization—in Shenzhen (Guangdong Province), Guangzhou (Guangdong Province), Beijing, Shanghai, Tianjin, Wuhan (Hubei Province), and Changsha (Hunan Province)—is among the hardest ones in contemporary Chinese history.

## 7 | CONCLUSION

In contemporary Chinese development, both government initiatives and workers' demands have expanded employment and workplace rights, although many of those rights remain aspirational and go unenforced (Chan, 2018b; Chan & Selden, 2019; Gallagher, 2017; Hui, 2018). President Xi reiterated in a October 2018 meeting with the new union leadership in Beijing: “Trade unions should adhere to the employee-centered working approach; focus on the most pressing, most immediate issues that concern the employees the most; and fulfill the obligation of safeguarding workers' rights and interests and sincerely serving workers and the people” (*Xinhua*, 2018). But the political environment for those working on labor rights issues in China, including grassroots social organizations, students, scholars, and lawyers, has been much constrained in Xi's era<sup>11</sup> (Howell & Pringle, 2018; Kuruvilla, 2018).

Market reforms, under the auspices of the Chinese state, have reclassified the rights, status, and benefits of different segments of workers. The older generation of socialist workers has long lost their job security in successive waves of privatization and enterprise restructuring. At the same time, younger cohorts of rural migrants and urban workers are also confronting diverse forms of insecure employment. “Fissuring” in the words of David Weil, “leads simultaneously to a rise in profitability for the lead companies who operate at the top of industries and increasingly precarious working conditions for workers at lower levels” (Weil, 2014, p. 8). Compared to directly hired employees, dispatch workers often receive inferior health insurance, pensions, maternity packages, skill training,

and other benefits, and they are paid less, through their agencies, despite the strengthened legal protections on the book. The proliferation of “flexible employment” has adversely impacted not only those subcontract workers. Regular workers would also encounter greater difficulty in making collective demands on employers as they now must compete with contingent laborers in the fissured workplace (Chan, Nair, & Rhomberg, 2019; Lee, 2019).

In a slowing economy, stability-obsessed officials have prioritized the containment of large-scale strikes, protests, and demonstrations. Legal rights have frequently been treated like a commodity, with contenders, employers, and government agents bargaining for the price, rather than it being arbitrated and litigated. And many workers remain completely unprotected at all. Commentators (Howell & Pringle, 2018; Kuruvilla, 2018; Lee, 2016) share a pessimistic outlook on realizing workers' rights as civil society organizations are increasingly surveilled by ever-expanding security apparatus. New workplace- and community-based labor organizing strategies, and the responses of the state under President Xi, are to be investigated on the frontline.

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## ENDNOTES

<sup>1</sup>Manfred Elfstrom (2017, p. 17) cited the independent efforts in tracing the numbers of labor protests in China despite the political sensitivity of the research projects. The data sets, for example, are compiled by Manfred Elfstrom (University of Southern California), Chen Chi-Jou (Academia Sinica), Li Yao (Harvard Ash Center), and nongovernmental labor rights group.

<sup>2</sup>Since 2009, “collective labor disputes” have been officially defined as disputes involving 10 or more employees (previously a collective dispute was defined by involvement of three or more employees).

<sup>3</sup>Hong Kong-based China Labour Bulletin (CLB)'s Strike Map, with reference to reports of labor strikes collected from online news archives and other digital sources, recorded a total of 10,948 collective protests from January 1, 2011 to December 31, 2018. Still, the available data captured only a small subset of “the population” in light of the state's ubiquitous censorship. Geoffrey Crothall, Communications Director of CLB, distills the partially available government statistics to estimate that the Strike Map at best “accounts for about 5 to 10 % of all incidents of workers' collective action in China” during the first 5 years of President Xi Jinping's rule from 2013 to 2017 (Crothall, 2018, p. 28). See the online interactive Strike Map covering 2011 to the present: <https://maps.clb.org.hk/strikes/en>

<sup>4</sup>According to China's Social Insurance Law, effective July 1, 2011, employees are legally entitled to five types of insurance (medical insurance, work-injury insurance, old age pensions, maternity insurance, and unemployment insurance) and a housing fund (designed to ensure that workers save to purchase housing). While the precise fee structure varies by enterprise and region, on average, the total contribution constitutes some 40% of the wage, with about 15% deducted from the worker's wage and the remainder paid by the employer (Chan, 2018a). Internationally, China runs one of the world's costliest social insurance programs.

<sup>5</sup>In June 2010 and June 2011, the All-China Federation of Trade Unions research group conducted questionnaire surveys at 1,000 enterprises in 25 cities across the nation, covering 10,000 staff and workers and 1,000 workplace union chairs (All-China Federation of Trade Unions, 2012, p. 23).

<sup>6</sup>For example, in December 2018, dispatch workers of a Foxconn factory reported that they were not paid the bonus of 6,000 yuan (US\$870) per person, even when they had worked 55 days to ramp up the production of iPhones for the holiday season. As of this writing, the legal responsibility of the agencies and Foxconn is to be investigated.

<sup>7</sup>Philip Huang (2017a, 2017b) used keyword search function of the Supreme People's Court open-access database to retrieve the case records of "dispatch work" in China. The Supreme People's Court has digitalized court judgments to make them available at China Judgements Online (<http://wenshu.court.gov.cn/>). As of December 31, 2018, more than 61 million documents of adjudication decisions were published online, and tens of thousands of new cases were added daily.

<sup>8</sup>A Walmart store union committee initiated negotiations on behalf of workers and staffs with management in the face of imminent relocation during mid-June 2014. But it was a one-off "closure bargaining" at the time of crisis in Changde city in China's Hunan province (Li & Liu, 2018).

<sup>9</sup>In the shifting boundaries of transgression, not-for-profit labor organizations have instead registered as businesses with the Bureau of Commerce in order to survive.

<sup>10</sup>In late July 2018, Chinese university students and graduates and worker supporters from around the country formed a support group to back the workers of Jasic Technology (Shenzhen). "Jasic Workers Support Group" at <https://jiashigrsyt1.github.io/> and [https://mobile.twitter.com/jasic\\_worker](https://mobile.twitter.com/jasic_worker). See also, "Global Support for Disappeared Left Activists in China": <https://www.facebook.com/supportjasicworkers/>

<sup>11</sup>The Communist Party's central committee removed the two-term, 10-year limit for president and vice president from the Constitution in 2018 (a two-term limit for the posts was ratified in a new constitution in 1982). The move would allow Xi Jinping to stay in power beyond his due retirement in 2022.

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