

## Authoritarian Legality at Work

### *The Workplace and China's Urbanization*

500 million people have already left their rural hometowns for Chinese cities; when they do so they are looking for work. How work is structured has implications far beyond the Chinese workplace; workplace institutions directly influence the pace and nature of China's urbanization. This book is about the Chinese state's project to develop legal institutions to manage workplace relations. My motivation in writing about these topics and studying them for many years is the connection that the specialized institutions that regulate and manage China's labor markets have to the larger challenges of China's dual transition: from socialism to capitalism and from agriculture to industry. Labor institutions, as vehicles to structure labor markets and the workplace, are inseparable from these two transitions and the massive and unprecedentedly rapid urbanization that has accompanied them.

The development of "rule of law" at the workplace was a necessary part of China's transition to a market economy as the government radically restructured how people related to the workplace, moving from administrative management under the planned economy to the contractual relations of a market economy, which then allowed private and foreign firms to employ Chinese workers and state sector firms to end their cradle-to-grave employment relationship with their workers. The establishment of this contractual notion of employment also necessitated legal and administrative changes. The state had to regulate labor markets by legislating labor laws and related regulations that set legal minimum standards; it had to implement and enforce these standards to ensure employer compliance; finally, it had to take on the role of a third-party arbiter of the unavoidable disputes that arise from contracts between workers and

firms. This book examines these interactions between the state, in its roles as legislator, enforcer, and arbiter, and workers as they make claims against employers for breach of the law.

During the first three decades of China's reforms, workplace institutions were bifurcated, dividing up workers based on their *hukou* status.<sup>1</sup> Urban citizens received social benefits and welfare from their places of work, but these benefits were dependent on their possession of urban, local *hukou*. Rural migrant workers were usually excluded from these social benefits, even if they were long-term residents in an urban area and employed by an urban firm (Solinger 1999; Zhang 2001; Wang 2005; Chan 2010). Instead, they were granted user rights over collectively-owned rural land in their hometowns. This division between workers – the granting of social security to urban, local workers and of land security to rural migrant workers – ensured a pattern of urbanization that was partial and temporary. Not only was it inadequate in meeting some of the basic needs of migrants, it also severely restrained labor mobility, exacerbated inequality, and encouraged social discrimination and mistreatment of rural citizens in cities (World Bank 2014).

China's central government has now rejected this pattern of urbanization, ostensibly moving toward a development model that is more inclusive, equitable, and sustainable. In order to leave this prior system of the bifurcated workplace and spatially-determined, differential citizenship rights behind, the new process of urbanization in China must include provision of formal employment (and with it participation in the urban welfare state) for rural migrants in exchange for the abrogation of their user rights over rural land. The workplace has a key role, not only in the payment of wages but also in the dispersal of social insurance. It is the linchpin of an urbanization scheme that exchanges rural security through land for urban security through employment. It is the central node of a strategy to move from industrialization via a temporary, migratory workforce to industrialization via a permanently urbanized population. The workplace is the setting in which the state transforms rural people into urban citizens.

Rising expectations for security through state-sponsored social welfare may be a natural consequence of urbanization, but in the Chinese context, this expectation is compounded by the lack of private rural land

<sup>1</sup> In the Chinese context, with its residential registration system (*hukou*), every citizen is tied to a specific place (a city for urban citizens, a county for rural citizens) and to a type of production (agricultural for rural vs. non-agricultural for most urban citizens).

ownership. Once peasants leave the countryside for employment, they risk losing their land security totally. Much of the social welfare provided by the Chinese state to its urban residents is attached to employment, and this protection via the workplace is key to urbanization and rural land reform because migrants will not willingly give up rural land security without it. In 2014, the Central Committee of the CCP and the State Council jointly issued a plan for a National New Type of Urbanization, 2014–2020 (*guojia xinxing chengzhenhua guihua*). This six-year plan for “state-led urbanization” (Ong 2014) proposes to increase the permanent urban population from 54 percent of the total population to 60 percent while increasing the number of permanent urban residents with urban *hukou* from 35 percent of the total population to 45 percent. Under this plan, over 100 million rural residents would be given legal status to reside in urban areas permanently and have full access to urban social welfare benefits (Yang 2014). But this assumes that these migrants will enter into formal labor contracts with their urban employers. Without formal employment, these urbanizing rural citizens will continue to be excluded from the most consequential urban social welfare, such as pensions, medical insurance, unemployment insurance, and occupational injury and disease insurance.<sup>2</sup>

This opening chapter situates the rest of the book in this larger context of urbanization. I lay out the key challenges that face the Chinese government in its ambitious plans to urbanize the majority of China’s population by 2050 and show how each of these challenges are linked to the workplace reforms and legislative changes studied in this book. These challenges include: the need to adjust to China’s changing demographic structure, the need to convince rural residents to give up land security for the allure of urban residency and employment, and the need to reform the *hukou* system to end systematic discrimination against rural migrants in the cities. While the first challenge is mostly a straightforward adjustment to China’s rapid demographic shift toward an aging population, the other two challenges are legacies of the socialist era institutions of collective rural land ownership, which substituted for rural social welfare, and *hukou*, which bifurcated society and constrained migrant workers’ opportunities to urbanize legally and permanently.

<sup>2</sup> There are other types of urban social welfare, including the minimum income guarantee (*dibao*) and urban resident social insurance. However, these programs provide only the most basic support.

## MOTIVATING PUZZLE

These macro issues of China's development trajectory explain the existence of the motivating puzzle of this book: why did the Chinese government legislate high labor standards and encourage its citizens to not only know about them but to actively press for their implementation and enforcement? The period under study in this book was a moment in time when the interests of workers and the central Chinese government converged over core workplace issues while firms and local governments were reluctant or unable to adjust. While workers' interests in better conditions and more stable employment are naturally related to their own subordinate status in the employment relationship, the central state has far more strategic and long-term needs to change China's development model away from its reliance on low-cost, low-skill, low-tech manufacturing employing an exploited migratory workforce. This model also included an exclusionary welfare state that covered an aging and less productive urban workforce while excluding millions of young, healthy rural workers. These necessary changes are not the romantic political ideologies of a workers' party, whatever the origins of the CCP in working class politics. These are instead the challenges of an ambitious middle-income nation confronting the exhaustion of its previous developmental model.

As Chapter 3 details, in order to reach these goals, the government now promotes both higher labor standards and more inclusive protection in a bid to bring more workers into the formal sector. The 2008 Labor Contract Law targets the issue of formality most directly by dramatically increasing the incentives to sign contracts and the penalties for failure to do so. Formalization of employment relations is the first step toward better protection of all workers and more inclusion of rural migrants in particular. The pathway to a more stable pattern of urbanization is via these reforms to the labor market and also through another major and related institutional reform: rural land rights and the exchange of land security for employment security and concomitant social insurance. Like other East Asian development states, China's evolving welfare state is a *productive* one – with most social benefits tied to work (Holliday 2000; Frazier 2010; Mok and Hudson 2014).

The legislation of high standards and the formal expansion of social welfare programs to rural migrants are only the first steps. Enforcement of and compliance with these new standards by local governments and employers is far from guaranteed. China, like many developing countries, has a large gap between what is formally promised in law and what is

actually delivered on the ground. Enforcement and compliance mechanisms are key to how the ratcheting up of standards and inclusive policies play out. In subsequent chapters, I show that the Chinese government has very deliberately chosen methods of enforcement and compliance that are suboptimal for compliance but both politically rational and market conforming. With the exception of occasional top-down campaigns to target severe problems (such as wage arrears), the Chinese state has delegated enforcement of these new labor protections to workers themselves. Through the media and propaganda system, the state has propagated knowledge and awareness of workplace rights in order to facilitate bottom-up legal mobilization. Through the dispute resolution system, workers are tasked with their own rights protection, a role that many have taken on with alacrity.

Through restrictions on organization and selective repression of civil society, however, this bottom-up mobilization is individualized and fragmented. Many collective disputes are divided up into individual complaints; labor non-governmental organizations (NGOs) and “rights-defense” lawyers are constrained by the political environment; and the official trade union, the All-China Federation of Trade Unions (ACFTU), continues to serve as a junior partner of the government in resolving labor disputes. These constraints in the enforcement model lead to suboptimal outcomes for compliance as detailed in Chapters 4 and 5. The heavy reliance on workers themselves benefits workers with the skills and education to make use of the law. Compliance improvements accrue to the higher rungs of the labor market. Restrictions on organization and bargaining impede other workers, especially those with fewer skills and resources, to harness their collective power. The political threat from labor is reduced, but better compliance is sacrificed. The suboptimal outcomes for compliance and the frustrating and often ineffective road of legal mobilization also leaves many workers disenchanted and increasingly prone to search out more extreme methods of resolution, including strikes, demonstrations, and violence. As the concluding chapter details, in lieu of allowing for more effective organization and representation by workers or trade unions, the government must now manage this emergent intensification of labor conflict and instability directly.

Given what we know about the Chinese state – both its ambitions and its fears – it is perhaps not surprising that the current dilemma is a result of its “overresponsiveness” (Liebman 2014, 103). The crux of the matter is that workplace reforms and improvements are not merely tactical responses to the grievances of a marginalized working class; they

are strategic levers for the state to push the Chinese economy toward a new development model and a new, more lasting path of urbanization. For workers, however, the government's attention to these issues has been emboldening. Through the promulgation and heavy promotion of new legal rights at the workplace, the government has raised expectations of workers and enlarged the political space for rights' mobilization. At the same time, organization and representation structures have hardly budged; the monopoly role of the official ACFTU is still firmly entrenched, suffocating to workers and labor activists outside the system. It is to labor's benefit that the government needs these changes to manage its larger developmental challenges because they have been pursued despite the political risks. Without these reforms and improvements, the following three challenges will severely affect China's ability to move beyond the current development model. There should be no mistaking the convergence of interests between the central government and workers as anything but an alliance of convenience.

#### THE DEMOGRAPHIC CHALLENGE: CHINA'S FADING DEMOGRAPHIC DIVIDEND

Many factors led to China's growth miracle that began in the 1980s and has now been sustained for three decades. While there is a long-running debate about the contribution of top-down decisions (policy making by China's leaders) versus bottom-up action (market making by China's farmers, entrepreneurs, and local officials), it is indisputable that China's demographic structure was extremely favorable, though absolutely temporary. At the onset of reforms, China's working-age population was much larger than the proportion of older and younger residents. This was attributable to declining birth rates, which had started to occur even before the onset of the strict one-child policy in the late 1970s, and declining child mortality rates during the Maoist period. This "demographic dividend" paid off as a relatively young workforce became more productive and had fewer dependents to support (Feng 2011; Song, Garnaut, and Cai 2014).

This demographic structure has evolved as the workforce has aged, fertility rates have reached non-replacement levels, and the average life span of China's population has lengthened. By 2050, 33 percent of the population will be over sixty years old, making China's demographic structure look more like some of the advanced industrialized countries of Europe (Development Research Center of the State Council and World

Bank, 2013, 276). The size of the working population has already begun to decline, squeezed at both ends as women have fewer children and older people live longer. The World Bank estimates that by 2030 China's old-age dependency ratio (the proportion of those over sixty-five to those of working age) will resemble that of Norway and the Netherlands (Development Research Center of the State Council and World Bank, 2013, 16).

China's demographic dividend went beyond simple demographics, however. It was also significantly enhanced by the institutional structure of the household registration system and the barriers on permanent migration of rural citizens to China's cities. Once the barriers to temporary migration were relaxed in the early reform period, these policies ensured that a young rural workforce was available for urban employment while still being almost totally excluded from social welfare benefits via the urban workplace and labor protections via the evolving labor legislation. The lack of social welfare and access to public goods such as health care and public education for migrants' children ensured that most migrant workers were only temporary residents in their cities of work (Golley and Meng 2011). They would either voluntarily return to their hometowns as they aged or they would constantly seek out new employment at higher wages, giving up security for higher returns. Their status as temporary workers also made it easier to justify their exclusion from legal protections and contractual benefits that should have been extended to the workforce as part of the implementation of the 1995 Labor Law. Migrants' inability to build secure, complete lives in cities made this "demographic dividend" particularly beneficial to employers who were able to hold down their labor costs considerably through the cyclical employment of young rural migrants.

In 2004, however, coastal Chinese manufacturing centers began to report labor shortages as factories struggled to attract enough young migrant workers onto their production lines. Various explanations exist for what now is a persistent problem for manufacturing firms across the country: a dearth of entry-level workers into the monotonous jobs that fueled China's rise as an industrial powerhouse producing ever larger amounts of the world's electronics, automobiles, and household items. Some economists argue that China has reached the Lewis turning point, when the absolute supply of rural labor dwindles and drives up wages in the low-skilled urban sector (Garnaut and Song 2006; Du and Wang 2010; Meng 2012). As Arthur Lewis argued, this point is critical for the path of industrialization of developing countries and helps explain the non-linear nature of wage increases as agricultural labor moves into

manufacturing and service sectors (Lewis 1954). Compounded by the broader demographic shift of the declining working age population, this turning point requires that China do more to boost the productivity of current workers as it can no longer rely on simply increasing cheap labor inputs from the farm. Many other economists, however, disagree, arguing instead that the labor shortages in the cities and development zones are the result of the institutional barriers to permanent migration and citizenship. For example, Golley and Meng estimate that if the institutional restrictions of *hukou* were significantly relaxed, China's migrant labor supply would double from 150 million migrants to 300 million (Golley and Meng 2011). Migrants would also be far more likely to reside more permanently in the regions where they have found employment. Surveys of migrants certainly support these claims. Most migrants report that they are very interested in long-term, permanent migration to urban areas. Many migrants also say that the major barriers to this goal relate back to the *hukou* system (Knight and Yueh 2008).

Although the debate over the proportional impact of straight demographics versus institutional barriers continues, both problems make changes to the Chinese workplace absolutely essential for the longer-term viability of a *new* China model of development. At the workplace, this model of development differs from the older one in key characteristics: the workforce profile is older and more stable; quality and training matters more than quantity and low cost; rural workers are less migratory and shifting to locate permanently in urban areas. The division and separation between migrants' work and their home lives, especially the raising and educating of their children, diminishes. As Chapter 3 details, China's central government has pursued legislative and policy changes to work toward this development model. Employment security has been enhanced by the new protections of the 2008 Labor Contract Law, with the hope that companies will be more likely to invest in the skills and training of a more stable workforce. The 2011 Social Insurance Law and the broader policy changes to the *hukou* restrictions also aspire to integrate migrants into urban social insurance programs, improve the portability of social insurance benefits, and expand their access to other urban public goods, including legal residency and public education for their children.

As this book amply demonstrates, achieving these goals will be extraordinarily difficult because they threaten to disrupt the structures that have benefitted powerful actors in China's economy and place considerable new burdens on local governments to serve their entire populations, not only those with long-term local residency rights. Moreover, the



enforcement mechanisms that the state has deployed thus far have been insufficient to compel compliance. Restrictions on collective organization of workers, repression of civil society organizations that advocate for workers' rights, and a dispute resolution system that is individualizing have minimized the power of these new protections and welfare entitlements.

#### THE SECURITY CHALLENGE: EXCHANGING LAND FOR WORK

The two leading causes of social unrest in China are labor disputes and rural land disputes (Li, Chen, and Zhang 2015). These disputes are usually analyzed and considered as discrete problems, each related to the respective dysfunctions of the urban workplace and rural local governments. However, the two are closely intertwined. The declining access to land security among rural residents drives the increasing demands and expectations of rural migrant workers. As access to land security decreases, demands for social security climb. Farmers pushed out of villages by land expropriation must seek out jobs and employment security in cities to replace what they have lost in their hometowns.

Since the 2011 Social Insurance Law, migrants' access to urban social insurance has improved gradually from very low levels of participation to moderately low levels of participation. Migrants' complaints about social insurance arrears and demands for enhanced compliance with social insurance laws among migrants have greatly increased over the past five to ten years. Social insurance is now one of the leading causes of labor disputes and strikes (Li, Chen, and Zhang 2015, 256). In 2014, over 50,000 workers of a large shoe manufacturer in Guangdong went on strike to demand that their Taiwanese employer pay social insurance arrears going back several years. Other recent large strikes in Guangdong, Jiangsu, and Heilongjiang have also involved demands for social protection (China Labour Bulletin 2015).

At the same time that social insurance disputes have rocked large urban employers, rural villagers have struggled to retain their land or to improve their compensation packages from local governments attempting to take their land for commercial development. Violent clashes have occurred with some frequency (Erie 2012; He 2014; Ong 2014; Hornby 2015). The root of the rural land problem lies in the collective land ownership system, which privileges local governments with the power to expropriate land, and the fiscal system, which since 1994 has centralized tax revenue at the central government level while leaving local governments with not

only a smaller proportion of tax revenue but also more unfunded mandates to provide public goods to local residents. The fiscal constraints tightened over the 1990s, but became even tighter for local governments after the central government cancelled the agricultural tax in 2006. Many onlookers heralded this historic move as a key sign that the administration of Hu Jintao and Wen Jiabao was serious in their bid to improve rural livelihoods, tackle rural–urban inequality, and reduce social conflict over rural taxation. However, this change had one very serious side effect. It made rural local governments much more dependent on land and real estate revenue (Whiting 2011). Local governments became more interested in “flipping” agricultural land by taking land from farmers and leasing the land-use rights to industrial and commercial developers. In the 1990s, these tactics led to the “zone fever” among local governments to reclaim agricultural land as space for industrial development through the establishment of economic development zones and attraction of foreign direct investment (Rithmire 2013). In the 2000s, local governments, especially in suburban areas, began to look more to commercial development as an engine of income and tax revenue by building real estate developments for both commercial and residential use. The infamous “ghost cities” of recent years are one consequence (Sorace and Hurst 2016). The drive for land development reflects the fiscal and budgetary incentives of local governments rather than consumer demand. Luxurious shopping malls, ornate high-end apartment complexes, and magnificent government offices also demonstrate modernity to visiting higher-ups and potential investors.

The creation of a new class of “landless peasants” is another consequence of the land dependence of local governments. Ong estimates that from 1987 to 2010 over fifty-two million peasants lost their access to collectively owned land. Land loss also drives migration to cities, but without the fallback security of rural land, more and more Chinese peasants must look to the state for social welfare and long-term security. While previously failure to participate in social insurance was often on the part of both employers and migrant workers, more migrant workers are beginning to claim their rights to state schemes for social insurance. The swift uptick in social insurance disputes among migrant workers indicates this growing demand. If the expropriation and commercialization of rural land are to continue, which it should as a function of rapid urbanization and because of fiscal dependency on land revenue, the responsibility of urban workplaces to meet the social security demands of migrant workers will also only intensify. While land and labor disputes are

discrete problems that do not overlap directly, their dual rise is inextricably linked. As land security diminishes, the urban workplace becomes even more important – not just as the place to earn a wage, but also a place to earn state-sponsored welfare.

#### THE EQUALITY CHALLENGE: MIGRANT WORKERS AS URBAN CITIZENS

The challenges of China's ambitious urbanization scheme are not solely regarding the relationship between the state and its rural citizens. Urbanization is also leading to greater contention between urban and rural citizens as migration to urban areas puts pressure on scarce resources and increases competition for jobs and public goods. Urban citizens have long enjoyed policies favoring them, from social insurance to public education to access to quality health care (Solinger 1999; Zhang 2001; Tang and Yang 2008; Wallace 2014). Local governments have also been accustomed to the notion that they are responsible for local legal residents, but much less so for the legions of rural migrants who toiled in their midst, often doing the dirtiest and most dangerous of jobs without the benefits of local citizenship. The goals of China's new urbanization schema include the undoing of this urban bias and a more equitable distribution of resources, not only between rural and urban citizens, but also between legal local urban residents and their migrant neighbors. Achieving a more equitable distribution requires that the relative benefits of urban residency decline and that these scarce benefits be divided up more equally between urban residents and newly urbanizing migrants.

While the Chinese media and public opinion have been generally sympathetic toward the plight of migrants as a marginalized and exploited sector of society, this sympathy can dry up when policies change that directly impact the lives of urban residents. For example, in 2013, Beijing and Shanghai residents very vocally opposed a central government plan to allow the children of migrant workers to take the university entrance exam in those cities. Competition into the most elite universities in China is intense, with many of the most prestigious universities located in those two cities. Local residents receive preferential admission policies for schools in the same city. Beijing and Shanghai high school students can gain entrance to the best schools with lower scores than their provincial compatriots. Local residents rightly feared that a large influx of new students, perhaps with greater determination to achieve high scores and escape rural poverty, would reduce the educational opportunities of

their own children. In the end, while many second and third tier cities did open up their exam system to migrant children, Beijing and Shanghai continued to strictly limit access (Fu 2013; Luo and Jin 2013).

There is a direct line between the controversy over educational access and the role of the workplace in structuring urbanization. While labor market segmentation through the *hukou* reduced direct competition between local residents and migrants for jobs, the new plan for urbanization links migration to formal employment. Competition for employment will intensify as urbanization speeds up (Knight and Yueh 2008). Employment competition then extends to competition over formal employment status, wages, social insurance, and finally to the public goods that come with long-term urban residency – education, housing, and access to medical care. In changing the rules of public goods distribution, the central government has begun to threaten the traditional pattern of urbanization that encouraged adult migrants to come to cities as temporary sojourners, often divided from other family members, with a return to rural hometowns as the only safety net in the event of injury, sickness, and even old age. As many critics of the current situation point out, access to urban public goods for migrant workers is still quite constrained. Progress is slow, for example, in their access to formal employment through contracts and to social insurance for pensions and medical as I detail in subsequent chapters. Moreover, sectors with very large numbers of migrant workers such as construction and low-level services have far worse compliance than manufacturing. However, progress is slow because local governments *and* local residents alike often oppose central government edicts to grant migrant workers access to the benefits of urban life.

#### WORKPLACE RIGHTS AND THE CHALLENGES OF URBANIZATION

Urbanization in China will be difficult to achieve without the gradual dissolution of the household registration system. As a system that some have likened to a form of apartheid, the separation of the population into rural and urban populations and the allotment of employment, social welfare, and many other benefits has unfairly benefitted a proportionately small urban minority while excluding hundreds of millions of rural citizens (Chan and Buckingham 2008). As migration-for-work accelerated in the 1990s, the number of people residing in urban areas and working in non-agricultural jobs rose rapidly so that by 2015, more than half of the Chinese population was ostensibly urban. And yet, due to

*hukou* restrictions, only about 36 percent of the population has legal rights to reside permanently in their cities of employment. Over 260 million people live in cities without the long-term right to do so (World Bank 2014, 5).

As much *hukou*-related research has shown, reforms to the *hukou* system have been painfully slow. Although the central government announced its intention in 2001 and many times since to gradually end the rural-urban division of *hukou*, the reforms have been constrained at every step by the politics of deeply entrenched urban bias and redistribution of scarce resources (Wang 2005; Chan and Buckingham 2008; Whyte 2010). And yet it is essential to the Chinese economy that these changes be made. The demographic future of most Chinese cities is bleak without an influx of younger workers from the countryside who can pay into the social insurance accounts to support retirees. Labor mobility and decreased segmentation of labor markets will benefit the economy and enhance productivity. While this will increase the competitive pressure on urban workers, it will benefit rural citizens who have been excluded from many jobs because of their *hukou* status. Allowing migrating rural citizens to become full urban citizens may also alleviate the intense social conflict over rural land rights. Finally, these changes may at last begin to bring down China's high rates of inequality and the scourge of social discrimination against rural people.

The workplace rights and protections extended in China's new labor laws are the focus of this book and they are directly connected to these issues as well. In a sense these new laws and regulations are substituting for more substantial *hukou* reforms by broadening protection to all workers, encouraging formal employment status for migrants, and changing social insurance policies to increase migrant participation. While these reforms cannot replace more fundamental changes to the *hukou* system, they have led to the relative decline in the value of an urban *hukou* by making formal urban employment and participation in social insurance core workplace rights for migrants and urbanites alike. In doing so, these workplace changes have the potential to change the nature of China's urbanization.

As subsequent chapters detail, however, the enforcement model that the government has deployed to reach these goals is woefully inadequate for the task. By leaving the tasks of enforcement and compliance to workers themselves, the government has encouraged the mobilization of workers from the bottom to put pressure on recalcitrant local officials and employers. This model *has* had some effect, with greater rates of formalization

and expanded participation on social insurance. However, the benefits of these new protections tend to compel compliance at the high end of the labor market, leaving many frustrated and dissatisfied with the large gap between the promise of the law and its realization on the ground.

### Data and Methodology

This book is based on a decade of research that combines in-depth qualitative research at a legal aid center in Shanghai, data from two multi-city surveys of labor and employment issues, follow-up interviews with survey respondents with labor dispute experience, interviews with Shanghai enterprise managers in the aftermath of the Labor Contract Law of 2008, and multi-year visits to the field to interview officials, academics, lawyers, NGO leaders, and trade union officials. I was also a regular participant in conferences and workshops on labor issues in China and Hong Kong where key cases, events, and laws were extensively discussed and analyzed. In the following paragraphs, I lay out how these data were collected and combined, my strategies to exploit different types of data to “triangulate” gaps or selection problems, and the limitations of the data used.

The East China University of Politics and Law (ECUPL) Legal Aid Center for Workers was established in 2001 under the jurisdiction of the university, a well-known law school in central Shanghai. While a Fulbright research scholar at ECUPL, I began a multi-year collaboration with the Center to study case outcomes and to analyze how legal aid recipients experienced the process and outcomes of legal mobilization. From 2004 to 2005, a student volunteer at the center and I collected forty-nine case histories from the first two years of the center’s operation. We then conducted forty-six in-depth interviews with the litigants (three litigants refused to be interviewed at length but their case documents were included in some analysis). During the spring of 2013, I returned to the center to conduct ten additional interviews with recent litigants and to collect case narratives and documents. In the interim, I returned to the Center on a yearly or twice yearly basis and regularly interviewed the director, the practicing lawyers, and student volunteers. The ECUPL Center closed in early 2016 after litigating nearly 500 labor disputes and offering consultation to thousands of workers. I discuss the center’s evolution and eventual closure in greater depth in Chapter 6.

These case narratives, which include the litigant interviews and the official case documents, form the core of the book. The in-depth interviews

allowed me to ask detailed questions about the litigant's dispute experience from beginning to end. This gave me key insights into how people mobilized the law, where they sought out help and information, and how law was only one of many pathways available for restitution. The interviews also explored the litigant's subjective understandings of the legal process and evaluation of key administrative and judicial institutions. The case histories included written documents, such as the original complaint, court and arbitration decisions, correspondence between the litigant and the employer about the dispute, and the legal aid litigator's final assessment of the case and the outcome. Key arguments about mobilization, legal consciousness, and access to justice are formed through my interpretations of the case narratives. That being said, this select group of legal aid recipients in Shanghai is never considered to be a representative sample of the population – of the country, or even of Shanghai, one of the wealthiest and most developed cities in China. This cohort of legal aid plaintiffs is unusual in at least two important respects: first, their access to legal aid is very unusual. Most workers with workplace grievances cannot find adequate, affordable legal assistance, though they almost always have ample access to legal information via the media. Second, these litigants had already very deliberately chosen the law as a viable pathway for dispute resolution. They may have unobservable characteristics that made them more litigious or more trusting in the law than other aggrieved workers.

To compensate for these deficits, I participated in two multi-city surveys of labor and employment issues. The 2005 Labor Law Mobilization Survey, funded by the National Science Foundation, and administrated by the Research Center on Contemporary China (RCCC) at Peking University, is a household survey of over 4,000 respondents in four cities: Wuxi, Jiangsu (in the Yangtze River Delta near Shanghai), Foshan, Guangdong (in the Pearl River Delta near Hong Kong), Shenyang, Liaoning Province (in China's northeastern "rustbelt"), and Chongqing (a provincial level city in China's southwest). This survey investigated the labor and employment situations of the respondents, asked questions about past experiences with workplace grievances, measured the respondent's knowledge of existing labor protections, and asked about expected behavior using a hypothetical vignette of a workplace problem. Eighty-two respondents of the LLMS reported taking formal action to resolve a workplace grievance, so in order to compare the experiences of the ECUPL legal aid recipients to those of the general disputing population, we conducted twenty-six follow-up interviews with these disputants.

During this period of intensive, qualitative fieldwork, the legislative framework structuring workplace rights began to change rapidly. At the end of my first extended period of fieldwork in 2005, I participated in workshops and discussions regarding the draft legislation for a new law on labor contracts. The draft law was eventually passed in 2007 along with two other important laws: one on employment discrimination (the Employment Promotion Law) and another on dispute resolution (the Labor Dispute Mediation and Arbitration Law). In 2010, China's legislature passed the Social Insurance Law. I was then invited to participate in the third wave of the China Urban Labor Force Survey (CULS), a survey conducted by the Institute of Population and Labor Economics (IPLE) at the Chinese Academy of Social Sciences (CASS). This third wave (the earlier waves were in 2001 and 2005) added new sections on labor disputes, labor contracts, and awareness of workplace rights. Like the LLMS, the CULS 2010 is a multi-city household survey. The cities include Shanghai, Guangzhou (in the Pearl River Delta), Shenyang, Liaoning (in the northeast), Wuhan, Hubei (in central China), Fuzhou, Fujian (in southeastern coastal China) and Xian, Shaanxi (in the northwest). The 2010 CULS allowed us to understand how the legislative changes of 2008 were beginning to affect the Chinese workplace and also to study a group of disputants from the general population in the aftermath of the 2008 Labor Contract Law.

In 2010, two of my doctoral students interviewed a selection of human resource managers from Shanghai companies, both state-owned and foreign, to qualitatively assess company reactions to the new laws and the rising tide of labor disputes that were occurring across the country. I also visited legal aid NGOs operating in other cities, including Beijing, Nanjing, Shenzhen, and Guangzhou. In 2012–2013 while a visiting scholar at the Koguan School of Law at Shanghai Jiaotong University, I completed follow-up case studies of legal aid recipients, and took part in many workshops and discussions on recent strike waves, revisions to the 2008 Labor Contract Law, and social stability and governance in China. During this entire period, from 2004 to 2015, I participated actively in the professional network of government and trade union officials, labor law scholars, activists and cause lawyers, and other academics by attending conferences, workshops and seminars on pressing issues or legislation. These venues were key opportunities for data collection through the speeches and papers of key actors in these important debates. I relied on these statements and discussions at conferences as well as written statements



and documents to make empirical claims about government policy, NGO activity, and so forth.

Although the book ends with a rather pessimistic assessment of the current state of rule of law initiatives in the realm of labor and employment, this is based on data that, if anything, could be criticized for suffering from “best case” selection bias. In terms of the qualitative data, I largely collected data on legal aid from Shanghai, one of China’s most developed cities, and from a legal aid center that was highly professionalized with an excellent reputation among local judicial professionals, including judges and lawyers. Shanghai’s legal system is also very developed with adequate resources and high capacity. This is not representative of the legal aid resources in most other cities. In Chapter 6, I examine the role of labor NGOs in facilitating collective legal disputes. Here I draw on the network of labor activists who are mainly located in Guangdong Province (with strong ties to academics in Beijing and elsewhere). The strong civil society characteristics of the Pearl River Delta, however, are also not apparent in other parts of China. Moreover, the large-scale crackdown on labor activism since 2015 has had a chilling effect on even Guangdong’s vibrant community. Finally, in terms of the survey data used to buttress my main points and to provide a wider view of trends, these surveys are multi-city surveys, varied by region but in all cases “tier one or two” cities, (most are provincial status cities or provincial capitals). They represent key regional differences between cities at the same level, but they are not nationally representative and, as such, probably give a more optimistic picture of compliance and enforcement than would be the case in a national sample of all Chinese cities.

### Roadmap

The organization of this book follows the thread of “legality” through the different processes important to legal mobilization around workplace rights. Chapter 2 situates the Chinese government’s deployment of rule of law in the wider debate on autocratic institutions. In this chapter I argue that China’s use of legal institutions to structure the workplace and labor markets has a functional logic relevant to the current challenges of the Chinese system. Empowering workers with highly protective rights creates bottom-up pressure on local governments and firms to improve enforcement and compliance with central laws. It also builds “hierarchical trust” between citizens and the central state, whose benevolent laws are

thwarted by corrupt local officials. Under some conditions, autocrats have incentives to build institutions that empower citizens.

Chapter 3 examines the institutional context of rights mobilization, focusing on three crucial institutions that shape rights consciousness and mobilization: the legislative framework of China's labor laws; the legal dissemination campaigns that educate citizens about rights; and the dispute resolution system set up to resolve labor grievances. I argue for a constitutive interpretation of law in its ability to shape rights consciousness. By examining the trajectory of the legal framework and mobilization trends during a period of activist lawmaking, I show how workers' mobilization and dispute behavior have in turn shaped law making.

Chapters 4 and 5 examine patterns of legal mobilization and its consequences. In Chapter 4, I investigate the role of education and legal awareness in bringing people to the law. Workers with high levels of formal education are more likely to invoke the formal legal system to protect workplace rights. They are also more likely to be satisfied with the results. This argument is intuitive, as law requires skills and resources to be used effectively. However, I also find that many less-educated workers exploit the ample publicly available information about labor laws to "self-educate," becoming knowledgeable about their workplace rights and more confident in their abilities to protect themselves.

Chapter 5 also examines patterns of legal mobilization by leveraging differences in the populations studied. First, I examine what kinds of workers are inclined to make use of law by examining differences between those who pursued legal resolution and those who did not. I then examine how the presence of legal representation can positively affect not only substantive outcomes, but also subjective experiences of the legal process. While access to legal representation is extremely limited, workers lucky enough to attain it report more positive impressions of the legal system and more inclination to make use of these institutions again. Finally, within the group of legal aid recipients in Shanghai, I examine how different generations of workers understood and experienced their workplace dispute. Older workers of the socialist era (those who entered the workplace during the "iron rice bowl" era) face a number of obstacles to mobilize the law effectively. While some of the obstacles are attributable to the typical variables of education and awareness, the switch to law and contractual obligations fundamentally undermined their claims to employment security and, by extension, social benefits of the state-owned workplace. Younger workers of the reform era (those who entered the workplace under the labor contract system) are more confident in their

abilities but they also have quite different expectations of the workplace and its obligations.

In Chapter 6, I explore the limitations of China's authoritarian legality, focusing on the relationship between the labor law system as set out in Chapter 3 with the trend of rising labor unrest, which began in earnest in 2008 with the Labor Contract Law and the onset of the Global Financial Crisis. Labor disputes doubled nationally that year with workers responding to the economic instability and the law's new protections with a wave of lawsuits against employers. In the years following, labor disputes continued at a high rate while strikes and demonstrations also increased as workers' bargaining power expanded in response to widening labor shortages and the economic boom that followed the government's investment program following the crisis. In response to the rising tide of lawsuits and strikes, the state's role in resolution changed substantially after a concerted effort to reduce lawsuits and channel as many disputes as possible to state-led mediation. Under the ideological goal of "harmonious society," the state sought to reach mediated (not litigated) resolution, thwart collective action and organization, and retain significant state discretionary power over social conflict. The state's "turn against law" (Minzner 2011) however, was matched by a growing number of workers and labor activists who resisted the atomizing and fragmenting dispute resolution system, attempting to maintain their collective power by extra-legal action such as strikes, demonstrations, and informal collective bargaining with management. This nascent social movement attempts to not only leverage the rights given by the state's legislation, but to harness collective grievances and interests despite the state's opposition. These dynamics between a stability-obsessed state and a disenfranchised but empowered workforce reveal the limitations of the current labor law system.

Chapter 6 focuses on three limitations: one, a mode of compliance that relies on individualized legal mobilization will produce suboptimal outcomes. Compliance will be uneven and will tend to accrue to the higher end of the labor market. Second, there continues to be no effective institutional mechanisms to resolve conflicts that go beyond the legal minimal standards. As workers' bargaining power has increased, they are demanding better conditions and higher wages. When these demands are already above the legal standards set out in the laws, the current system is ineffective. Third, for workers who are caught between the two dynamics of collective mobilization and individualized legal resolution, the legal process is ill-equipped to defuse conflict. Channeling collective unrest through

the individualistic resolution system increases workers' disappointments and frustrations. The incentive structure that leads local governments to prioritize "stability above all" creates escalation dynamics that encourage extreme behavior and violence. In the absence of further institutional reform, the state's reactive approach is likely to exacerbate conflict rather than reduce it.

In the epilogue, Chapter 7, I briefly relate these issues to the debate in 2015–2016 to revise and weaken the Labor Contract Law in the wake of a significant deceleration in Chinese economic growth. This debate and the eventual expected revision of the LCL may mark the end of this experimental period with state-sponsored rights mobilization. The goals of a changed development model and rapid urbanization will remain, however.