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Individual rights and collective rights: Labor's predicament in China

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Abstract

Despite the government's active legislation to protect workers, labor rights still remain widely ignored and poorly enforced in China. Structural constrains, such as the state's development strategy biased on efficiency over equity, tight labor markets, and the lack of an effective safety net, cannot fully explain why Chinese workers have had so little impact on the environment in which they work and the violations of their rights often occur. Using Marshall's theory of citizenship rights, this article explores the structure of China's labor rights for an explanation. It argues that while Chinese labor legislation stipulates workers' individual rights regarding contracts, wages, working conditions, pensions, and so on, it fails to provide them with collective rights, namely the rights to organize, to strike, and to bargain collectively in a meaningful sense. The lack of collective rights is one of the major factors that render workers' individual rights vulnerable, hollow, unenforceable, or often disregarded. Labor legislation that enables workers to act collectively is crucial for safeguarding their individual rights.

Keywords: China; Labor rights; Labor legislation

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Introduction

Market reform in China has drastically increased labor disputes, both collective and individual, in all types of enterprise, that is, state, collective, private, and foreign. Whereas the wave of labor disputes is an unmistakable indicator of the extent of labor rights violation in Chinese factories, it also reflects the growth of workers' rights awareness and their willingness to fight for their own interests. To respond to widespread labor disputes, the government has facilitated labor legislation at both the national and local levels, and established institutions for the settlement of disputes (Ho, 2003). A number of laws and regulations have been introduced in order to protect workers. As a result, workers have more opportunities than a few years ago to redress their grievances and seek justice (Lee, 2002; Thireau and Hua, 2003, 2004; Chen, 2004; Gallagher, 2005). In the society at large, the call to protect labor rights has significantly increased in the past few years. With the efforts of trade unions, NGOs, concerned scholars and lawyers, and the media, labor rights have increasingly attracted public attention. Their efforts have exerted pressure on employers and the government to improve labor rights.

Despite these positive developments, however, labor rights still remain widely ignored and the labor law continues to be one of the most poorly enforced laws in China (Chan, 2001). There are a number of structural constraints on labor rights: the state's development strategy with its bias toward efficiency over equity, tight labor markets, the lack of an effective safety net, and so forth. They have put and will continue to put workers in a disadvantageous position in labor relations. However, while these factors account for the current state of labor rights, they do not fully explain why Chinese workers have had so little influence on the environment in which they work and why their rights are often violated.

This article probes into the structure of China's labor rights per se for an explanation. It argues that while Chinese labor legislation stipulates workers' individual rights regarding contracts, wages, working conditions, pensions, and so on, it fails to provide them with collective rights, namely, the rights to organize, to strike, and to bargain collectively in a meaningful sense. The exercise of collective rights, of course, does not necessarily change the basic structural disadvantage of labor in a capitalist economy where employers determine the nature and availability of jobs, but as labor history in other social contexts shows, it is crucial for the development of 'class institutions' (Westen, 1999) that can countervail managerial as well as state power for workers' interests. Labor rights in China are defective in that they contain no constitutive laws that enable workers to assert themselves as a collective power capable of effecting labor relations and effectively safeguarding their individual rights.

Citizenship and labor rights

The nature of workers' individual/collective rights and their relationship can be understood in the theoretical context of citizenship rights. T.H. Marshall's classic

formulation distinguishes three elements of citizenship: civil, political, and social rights. Civil rights comprise those elements that protect individual freedom; political rights, those elements that guarantee participation in the exercise of political power; and social rights, those that provide access to material and cultural satisfactions (Marshall, 1992). Deriving from the experience of England, Marshall thought that the civil, political, and social components of citizenship developed in a historical sequence in the eighteenth, nineteenth, and twentieth centuries, respectively. These three types of rights are ontologically different but, according to Marshall's logic, civil rights were the basis for political rights, while both civil and political rights were the means to attain social rights (Tilly, 1998). Civil rights are vested in individuals. But their exercise creates groups, associations, and movements of every kind, which generate collective power. They also led to the development of political rights, from universal suffrage (individualistic) to party politics (collectivistic). Social rights, on the other hand, are "not designed for the exercise of power." They are "strongly individualistic" and "refer to individuals as consumers, not as actors" (Barbalet, 1988: 19). Social rights represent, in other words, the status of citizens in society rather than "a form of power" (Barbalet, 1988: 19). Inferring from Marshall's formulation, some scholars divide citizenship rights into two components in the light of their nature: "passive rights" or a passive form of status, and "active rights" or an active form of participation (Thompson, 1970; Janoski, 1998). Active rights are indispensable for the acquisition and protection of passive rights.

Labor rights, with their collective and individual elements, constitute an integral part of citizenship rights. Collective rights, which Marshall called "industrial rights" or "industrial citizenship," are an extension of civil rights to workers as a class,[1] rising as a response to a simple but powerful truth that workers and employers do not face each other as equals in the capitalist economy. They are rights of individuals permitting and enabling their collective action and organization, for workers are doomed to be hapless as individuals in the face of employers, who have power over workers in determining the nature and availability of jobs and their economic security, as well as of the state, which makes social and economic policies.

The primary institutional basis of collective rights is trade unions, which exercise the civil rights of their individual members collectively (Marshall, 1992: 40). Through unionism, collective rights turn into power that enables workers to influence the terms of employment, the condition of work, and the level of pay; and to develop means of extending individual rights. Thus making claims on both employers and

[1] While Marshall regards "industrial rights" or "industrial citizenship" as an extension of civil rights to workers as a class, Giddens (1982: 172) opposes linking industrial rights to civil rights by emphasizing their different origins. For him, civil rights resulted from the fight of the rising capitalist class against feudal privileges, while the industrial rights were achieved through the working class movement against employers and the state. But what cannot be denied is that the emergence of industrial rights was premised on a prior existence of civil rights, which reflected the collective exercise of individual workers' civil rights through their organization. Giddens' view also neglects the role of the working class in winning bourgeois freedom and democracy (Barbalet, 1988: 23). For the discussion on the role of the working class in the development of democracy see (Rueschemeyer et al., 1982; Collier, 1999).

the state is the major function of collective rights. Historically, the development of workers' individual rights and their institutionalization through welfare states or social policies in Western industrialized nations were attributable to the exercise of their collective rights in the forms of labor movements and party politics (Przeworski, 1986; Esping-Andersen, 1990).

Obviously, the sequential development of citizenship rights depicted by Marshall, and hence, the pattern of labor rights that reflects it, do not fit China. While civil/political or collective rights were the springboard from which social or individual rights were obtained and expanded in Western industrialized nations, social or individual rights in China have had little to do with collective rights. Under Maoist state socialism, Chinese workers acquired considerable social and economic entitlements, ranging from lifetime employment to substantial benefits including low-cost housing, health care, pensions, and education, but they did not enjoy real and meaningful civil and political rights. Their socioeconomic status resulted not so much from labor movements motivated by civil/political rights, as in the West, as from a revolutionary social transformation steered by a regime that ruled in the name of the working class. The post-revolutionary regime installed a paternalist system in state-owned enterprises (SOEs) (Walder, 1986) that provided an institutional guarantee of workers' economic status as well as mechanism of controlling workers through "organized dependence" (Lee, 1999). Embedded in workers' unique status as state employees, those social and economic rights were nevertheless not universal, as they were not applicable to the majority of the Chinese population—the peasants.

On the other hand, workers' collective rights (or civil/political rights) were severely restricted. The right to organize, the core of collective rights, nominally existed as trade unions were widely established, with almost universal membership. But it was exercised not by workers themselves but by the state, which claimed to represent the working class, as a way of controlling the industrial forces. Indeed, the fact that the All China Federation of Trade Unions (ACFTU) was the only legal labor organization preempted workers' rights to self-organize. While the right to strike was written into the 1975 and 1978 constitutions respectively, like the rights concerning free speech, associations, and assembly, it had hardly been exercisable under the existing political structure. There had also never been any specific law stipulating the methods of its enforcement. This right, however, was simply revoked in the 1982 constitution anyway. The 1950 Trade Union Law indicated that trade unions had the rights, on the behalf of workers, to make collective contracts through consultation with management. But this stipulation had little real meaning in practice. The absence of collective rights, however, seemed not to pose any major problem for workers' socioeconomic status in the pre-reform period. Although workers had no influence on social policies owing to their lack of collective rights, their socioeconomic status was safeguarded by the state. Employers as state agents had neither the power nor the incentive to impinge upon workers' individual rights.

The market reform that started at the end of the 1970s has gradually eroded workers' individual rights that they had have under state socialism. Through

measures ranging from "smashing the iron bowl," "the labor contract system," and "the reform of three systems" (employment, wages, and insurance), to *xiagang* (layoff), SOE workers' rights under state socialism have largely evaporated. The fast disintegration of workers' entitlements during the market reform testified to the vulnerability of individual rights when they are not backed by collective rights. Lacking collective rights, workers were totally defenseless in face of policy changes that were encroaching upon their individual rights. In the booming private and foreign sectors, exploitation and rights' abuses are so widespread that migrant workers have become one of the most victimized social groups in China. Labor rights, in other words, have stood out as a thorny issue as China moves to the market economy.

Labor legislation and individual rights

To respond to changed labor relations, the government has attempted to redefine workers' rights through legislation. The past decade has witnessed vigorous legislative actions at both the national and local levels, aimed to establish a legal framework for new labor relations in a market economy. China's labor legislation, however, is characterized by a stress on individual rather than collective rights. The centerpiece of the current labor institutions is the Labor Law, which entered into force in 1995. It is quite specific in codifying individual rights, labor standards, and a wide range of protection for workers. For example, Chapters 3–9 contain articles that stipulate laborers' basic rights with regard to employment, wages, rest and vacation, occupational safety, training, and dispute settlement. In addition, the government in the past decade or so has promulgated the myriad of laws, regulations, and administrative fiats aimed to protect workers' individual rights. They cover a variety of issues such as occupational diseases, industrial injury, unemployment insurance, minimal wages, pensions, medical insurance, maternity insurance, and so on. Since *xiagang* was enforced in mid-1990s, eleven state agencies plus ACFTU have either jointly or separately issued eight administrative fiats that specify workers' transitional "rights," including their entitlement to compensation and livelihood allowance, as well as measures assisting their re-employment in formal or informal sectors, and encouraging them to set up their own businesses.

The current labor law system also provides mechanisms that allow workers, mainly as individuals, to seek redress for their grievances. The Labor Law devotes a chapter to specifying legal procedures for labor dispute settlements (Chapter 10). Before the Labor Law was enforced, the State Council promulgated the PRC Regulations for the Handling of Enterprise Labor Disputes in 1993, which established the basic three-part procedural structures currently used to resolve labor disputes: mediation, arbitration, and litigation.[2] In the past few years, the cases brought by

[2] The State Council promulgated the Provisional Regulations on the Handling of Enterprise Labor Disputes in State Enterprises in 1987, which set up the three-part procedural structure for labor dispute resolution (Ho, 2003: 38).

workers to arbitration commissions and courts have dramatically increased, which reflects the growth of workers' rights consciousness and their capability to mobilize law in labor disputes. Evidence also shows that workers won the majority of cases arbitrated and adjudicated. For example, of 155,728 and 175,258 dispute cases brought for settlement in 2003 and 2004 to arbitration commissions, courts or other agencies at different levels, workers won 109,556 and 123,268 (China Labor Statistical Yearbook, 2005: 524). In Shanghai, China's largest industrial city, workers won 86% cases handled in 2005 (Xinmin Evening Daily, October 27, 2004). The Shanghai Municipal Trade Union has established more than 30 legal aid centers to provide assistance for workers in need (Chen, 2004). At the national level, as the ACFTU claims, by 2005 its branches at different levels have established 3858 legal aid agencies. In the same year, these agencies handled 30,755 labor dispute cases and provided legal aid and legal consultation for more than 1,000,000 people (People's Daily, May 11, 2006).

Despite of these developments, the enforcement of the workers' rights stipulated by the Labor Law remains highly problematic, especially in private sector (both domestic and foreign owned) where migrant workers are the dominant labor force. Breaches of contract, wage arrears, excessive overtime, horrible working conditions, industrial injuries, and abusive management are so prevalent (Chan, 2001) that the situation of Chinese migrant workers often catches international attention. Likewise, the Labor Law has become virtually irrelevant for SOE workers in the face of a forceful termination of the labor contract by administrative power, as *xiagang* is a state policy that cannot be remedied through legal procedures (Interview, Shanghai, June 2006). The state's regulations and policy measures regarding *xiagang* are often ignored, manipulated, or distorted by enterprises and local authorities that prioritize economic efficiency, bringing little help to numerous desperate *xiagang* workers. Rights violations strain labor relations. In three years from 2002 to 2004, 2,170,000 people were involved in labor disputes individually and 1,370,000 collectively (China Labor Statistical Yearbook, 2005: 523).

Official statistics perhaps only represent a tiny portion of the rights' violations occurring on a daily basis in Chinese factories. Most workers have suffered rights' abuses without voicing their grievance. The silenced majority has something to do with the lack of the means for the collective expression of discontents—the existing labor law institutions encourage workers to seek justice only as individuals. China's labor legislation stipulates individual rights and assumes that rights' abuses can be redressed through workers' individual efforts to resort to legal procedures. Thus, defending individual rights relies heavily on workers' personal courage, determination, and resources. But in most cases workers are too timid to bring abuses to light for fear of retaliation by management, as well as out of ignorance of their legal rights. Workers are always in an unfavorable position in the dispute resolution process, as they are often unable to collect evidence against management. For example, to win a case, a worker has to furnish evidence of abuse or breach of contract—an extremely difficult task, especially as many workers do not possess a copy of their contract and do not have access to documents of the enterprise in which they work.

This certainly discourages workers from pressing their charges. In redressing workers' grievances, trade unions have functioned more as agencies of legal assistance and/or social work, using a problem-solving strategy on a case-by-case basis, rather than as labor organizations that reflect workers' collective rights (Chen, 2003). The increasing frequency of spontaneous protests and increasing number of complaints flowing into government agencies indicate that unless based on workers' collective rights, trade unions lack the muscle and means to see that individual labor rights get enforced in the first place.

The latest effort made by the government to safeguard workers' individual rights is its plan to introduce a Labor Contract Law, which has been put forward in draft form at the end of 2005 and has invited public consultation since March 2006. The draft law intends to set a higher standard for the protection of workers' rights and rectify problems such as the low rate of use of labor contracts, the short-term nature of most labor contracts, and the lack of protection of workers. The ACFTU is credited with its effort to promote the pro-labor legislation, which has met strong opposition from some foreign investors.[3] However, the draft Labor Contract Law offers no collective rights to workers. The current public debate on this law has missed the fact that legislative intervention of any kind, on its own, will not be adequate to the task of improving labor standards and conditions for the country's workers. China has passed numerous laws and regulations to protect workers in the past two decades. But as China Labor Bulletin (November 8, 2006) points out, the adoption of these measures—in the almost complete absence of any parallel protection for workers' freedom of association and the right to collective bargaining—has led to a situation where the law is essentially falling into disrepute through a lack of implementation and enforcement.

Collective rights: limitations and unenforceability

Workers' lack of collective rights is a crucial factor that contributes to their powerlessness in the face of the force of the market. Collective rights are not totally absent from China's labor legislation. Both the Labor Law and the Trade Union Law, for example, contain clauses on the rights to organize although defined vaguely and abstractly. There are also administrative decrees on collective bargaining. The government also stipulates that SOEs' restructuring scheme must be approved by Staff and Worker Congresses (SWCs). But all these rights are circumscribed by various

[3] According to the 11 May report of the 21st Century Economic Report magazine, European Union Chamber of Commerce in China and the American Chamber of Commerce in Shanghai—the two largest foreign investors organizations in China—each submitted recommendations and opinion papers on the Draft Labor Contract Law to the Legal Affairs Committee of the Standing Committee of the National People's Congress on 20 April. Both expressed their strong opposition to some pro-labor provisions of the law. In a seminar on the draft law, a representative of the Shanghai Association of Human Resources Management in Multinational Companies said: "If this kind of law is going to be implemented, we will withdraw our investments." (http://www.clb.org.hk/public/contents/article?revision%5fid=38246&item%5fid=38245).

political and institutional factors that have made them either unenforceable or hollow.

The right to organize

The right to organize is the core of workers' collective rights. Labor movements all over the world started with workers striving for the right to organize and evolved with the institutionalization of such a right. The right to organize is the ultimate source of power for workers to balance the power of capital as well as state power and to protect their interests. Under China's political system, however, workers do not organize themselves. They are organized by the state. The reasons for workers' self-organization seem to be obliterated in a society where labor is no longer pitted against capital, the interests of the state and management, and workers are assumed to be identical, while workers' economic interests are guaranteed. The state presumably represents workers and rules in their name. Organizing labor is a function of the state performed by the ACFTU—the state-controlled trade union—mainly for the purpose of production and political mobilization. There have been few attempts by workers to seek organized actions beyond the ACFTU framework.

The right to organize was not an issue until the market reform subjected workers to a capitalistic economy while the state extricates itself from labor relations. Widespread labor disputes, mostly caused by management, bring workers' organizing rights to the fore. Legally, workers' right to organize seems to be recognized by the state in both the Labor Law and the Trade Union Law. Article 7 of the Labor Law stipulates clearly workers' right to organize:

> Laborers shall have the right to participate in and organize trade unions…Trade unions shall represent and safeguard the legitimate rights and interests of laborers and stage activities independently in accordance with laws.

The Trade Union Law contains a similar article on the right to organize, as Article 2 defines trade unions as "mass organizations of the working class formed by the workers and staff members on a *voluntary* basis" (emphasis added). Yet, the right to organize so defined is effectively circumscribed, and indeed, practically cancelled out, by two other articles of the Trade Union Law: Article 4, which stresses the party leadership over union activities, and Article 10, which declares that the ACFTU is the only legal format of union organizations. According to the law, in other words, the right to organize must still be exercised through official trade unions controlled by the party. Independent organizing remains illegal. The inherent contradiction of the legislation with regard to the right to organize reflects the state's general intention to prevent any "collective alternatives" in society, which could mean an opening up of "political choice to isolated individuals" (Przeworski, 1992). Independent unionism was perceived to be particularly dangerous to the regime in the aftermath of the Polish Solidarity movement of the 1980s (Wilson, 1990).

Thus workers' initiatives to organize themselves, which usually took place either where the ACFTU has no presence or when the factory union failed to defend workers, were always viewed by the authorities with suspicion and faced suppression.

In October 1998, workers from a Taxi Company in Tongzhou district, Beijing, which did not have a union, launched a movement to form one. The motivation behind seeking to organize was the desire to counter the management, which the drivers believed was ruthlessly exploiting them. When their demand to form a union was ignored by the company, the drivers chose a man named Dong Xin as their representative to file a law suit against the company for violating the Trade Union Law by depriving them of their right to organize. However, the district court refused to accept the case on the ground that although organizing unions was the right of workers, it was not an obligation of employers. So the latter's unresponsiveness to the workers' claim did not constitute any violation of the workers' rights.

The district union also categorically rejected the drivers' demand to form a union on their own, stressing that organizing must be conducted from top to bottom rather than the other way around. In fact, union cadres eyed Dong Xin with strong suspicion and thought that he might be a Walesa-like figure stirring up the drivers. On the other hand, to pre-empt any independent organizing effort, as well as to pacify the drivers, the district union decided to set up an official union in the company with an appointed head.

After being reported in the *Workers' Daily* (March 1 and April 20, 2000), this incident provoked a public discussion among labor and legal scholars on workers' right to organize. Most of them supported the workers' demand to form a union. The key issue, as several commentators pointed out, was who should exercise the right to organize: workers themselves or governmental authorities. They criticized the latter's attempt to prevent workers' self-organization and argued that "appointed unions" were a distortion of workers' right to organize.

The authorities also spared no effort to prevent spontaneous organizing by migrant workers in the private sector, which the ACFTU has not effectively reached yet. Organizing is attractive to many migrant workers as they need to find a sense of solidarity, mutual help, social networks, and self-protection in an entirely new urban environment that is often unfriendly and discriminatory to them (Zhan and Han, 2005). Migrant workers in Rui-an city, Zhejiang Province, established an association aimed to defend their interests as well as to provide services. *Nanfang zhoumo* (Southern weekend), a local weekly paper in Guangdong, where migrant workers concentrated, covered the story on July 4, 2002, and another newspaper, *Nanfang dushibao* (Southern municipal daily) in the same city, ran an editorial on July 10 openly encouraging autonomous organizing by migrant workers. Only the next day, however, a formal statement by the General Trade Union of Guangdong Province appeared in this same newspaper, denouncing such autonomous organizing as being against the law and declaring that any labor groups formed outside the ACFTU framework were illegal. The provincial union's response was not a surprise as the ACFTU has a strong tendency to draw analogies between any independent organizing and Polish Solidarity. As early as 1995 in Shenzhen, a young woman from Hunan Province proposed the idea of establishing an association of employees (*dagongzhe xiehui*), which would be a cross-enterprise group for migrant workers in the area. When the news reached the ACFTU, the first reaction from one high-ranking official was: "Isn't this Solidarity?" (Personal communication with a union cadre, February 2001).

In SOEs workers are formally unionized by the ACFTU but factory unions are notoriously ineffective and powerless due to their structural subordination to management as well as to party organizations. When the reform of SOEs systematically deprived workers of their previous entitlements through various forms of restructuring, the unions did little to speak and stand up for workers. Workers were totally defenseless in face of the assault of the market reform, which testified to their lack of the right to organize.

The failure of factory unions to represent workers in the restructuring of SOEs often instigated workers' efforts to seek self-organizing in order to resist those schemes that were damaging their interests. Such organizing was usually amorphously structured with a few activists playing roles in coordinating collective petitions and mobilizing protests. It was, however, often treated by the government authorities as illegal. When a factory (ZZPG) in Z city was being privatized in 2000, which the official union endorsed, the workers decided to create their own organization in order to reverse the transaction that they thought was illicit. In a rally attended by over one thousand people, seven activists were elected to form a "Management Committee of Workers and Staff." This committee, however, only existed for one day—it was immediately declared unlawful by the municipal government and banned from functioning (Interview, February 2004). The anti-privatization struggle in this factory was short lived due to the lack of organization.

In another factory, ZZPM, in the same city, the anti-privatization contention was relatively sustained because workers were well organized (Chen, 2006). But the initial effort at organizing had to be carried out in secret lest the authorities interfered. Workers' action took a more explicit organizational format after they successfully held a Worker and Staff Congress (WSC) meeting, which produced a General Committee composed of the workers' activists. It provided the workers with a more legitimate organizational platform to press for their case. After the failure of the negotiations between workers' representatives and management and the government authorities, the organized workers occupied the factory for a couple of months. It ended only when the police forced their way into the factory and detained two key leaders. However, the remaining activists refused to quit and continued to organize workers' actions by lodging persistent collective petitions to various levels of government agencies. Workers' determination and perseverance eventually led to the termination of the privatization scheme. This unusual case was obviously a testimony to the power of organization, which contributed to an outcome in workers' favor.

On the other hand, the contention in the ZZPM also typically reflects the authorities' mentality in the face of organized labor activities. Although the workers' committee established by the SWC was not immediately disbanded, the municipal government definitely refused to acknowledge its legitimacy on the ground that, with the change of hands of the factory, the original WSC had already lost its legal status. After the crack down on the protest, the police investigation focused on the "illegal organization" of the workers' committee. Mr. L, the detained worker leader, was interrogated more than thirty times about every detail of the organizing process—who initiated it, how election was conducted, the division of labor in the

committee, how many times the committee had met, how decisions were made, what role Mr. L had played in the committee, and so on (Interview, February 2004).

For the authorities, how workers got organized and mobilized seemed to be more important a concern than workers' complaints and demands. The organized resistance per se was treated as a political issue, despite the fact that it had the purpose of redressing economic grievances.[4] Although in the end the authorities dropped the charge against Mr. L of "illegal organizing" and "disrupting public order" due to a lack of solid evidence, he spent nine months in jail and was twice tried in court. The episode sent a clear message to workers that independent organizing outside the ACFTU was not tolerated. In fact, in the past decade a number of workers across the country have reportedly been put in jail or sent to labor camps for "advocating the right to organize unions" and "setting up labor groups" (China Labor Bulletin, March–April 2000).

The right to strike

The right to strike did not appear in the PRC's first constitution put into effect in 1954. But the new republic encountered the first wave of working class protests in 1956–57, as a result of the tensions in workplaces caused by the socialist transformation. The Hundred Flower Campaign in the same period, despite being devised for intellectuals, obviously encouraged workers' open expression of their grievances. In Shanghai alone, China's biggest industrial city, major labor disturbances erupted in 587 enterprises (Perry, 1994). Similar protests occurred in other parts of the country. In face of labor unrest, Mao, as a revolutionary leader who had begun his political career by mass mobilization, showed his tolerance and even sympathy toward the workers. He saw workers' actions as being caused by government "bureaucratism" and as a way to correct the latter. In his talk to the Second Plenary Meeting of the Eighth Central Committee on November 15, 1956, he said:

> [We should] allow workers to strike and allow masses to demonstrate. Demonstration has the constitutional ground. In the event of revising the Constitution in the future, I propose that the freedom of strike be added, permitting workers to strike. This is conducive for solving the contradictions between the state, managers and the masses (http://post.baidu.com/f?kz=11501693).

Echoing Mao's talk, the Central Committee issued "Instructions on Handling the Problems of Strikes and Students' Strikes" in 1957. This document attributed recent strikes mainly to government officials' bureaucratic work style and pointed out that the best way to prevent strikes was to adjust social relations and overcome bureaucratism. It also proclaimed the party's policy for dealing with strikes, or *naoshi*: (1) allowing rather than forbidding workers to strike; (2) unless there are major acts of destruction or criminal actions, no arrest should be carried out and no encirclement

[4] As Mr. L said, "this was originally a spontaneous struggle, but they [the authorities] wanted to elevate it to political dimension and accused me of threatening national security." Interview, February 2004.

of the police or other forces should be applied; (3) accepting any correct element of the masses' demands raised during strikes or demonstrations; and (4) educating the masses after the incident and not discriminating against those who led "*naoshi*" if their actions were not against the law (http://news.xinhuanet.com/ziliao/2005-01/05/content_2418443.htm). Of course, these policy measures did not provide a "legal" prescription of the right to strike in any juristic sense. But at a time when China's legal system remained primitive and society was largely ruled and managed through party policies, this document amounted to a *de facto* official recognition of workers' right to collective action.

The "freedom of strike" became a constitutional right, when China adopted its second constitution in 1975 and it remained so in its third one in 1978. However, except for a phrase in the constitution, no further legislation had been made regarding how the right to strike should be enforced—by whom, under what conditions, and so forth. Thus, like other rights stipulated in the two constitutions, which were largely symbolic and cosmetic, the right to strike was also made virtually unenforceable.

However, even though the 1957 document permitted strikes and the freedom of strikes was stipulated in the 1975 and 1978 constitutions, it is hard for us to know how they could be applied in the event of a strike. Starting from the wave of strikes in 1957 until the economic reform started in the late 1970s, there had been no major strikes or labor unrest out of economic grievances,[5] thanks to the state's insurance of workers' socioeconomic status, as well as its effective organizational control over the industrial force through the ACTFU.

The "freedom of strike," however, was removed from the 1982 constitution, which is still in effect. No public debate whatsoever was held on this change. Two main reasons for its deletion were given by the constitutional scholars who had been involved in the drafting of the new constitution. First, freedom to strike, as well as the "four big freedoms," in the 1978 constitution was a "product of ultra-leftism" and hence it was logical to do away with them when China ended its ultra-leftist politics. Second, since enterprises belonged to the whole people, the stoppage of production was detrimental to the interests of the people, including the working class itself (Zhang, 1982; Wu, 1982). The repeal of the right to strike was obviously influenced by the post-Cultural Revolution political atmosphere, where political leaders were obsessed with social disorder and determined to eliminate any legal leeway for the mass movement. We cannot speculate whether this change was also a preventive action by the government that just began the market reform and was already concerned with upcoming industrial conflicts. What is for sure, however, is that the removal of the "freedom of strike" from the constitution deprived workers of a legal right in a time of massive labor dislocation, exploitation, and suppression.

It is worth mentioning that the ACFTU once attempted to push for the legalization of the right to strike. In 1988, when industrial conflict increased while the political climate seemed to be turning liberal, the ACFTU submitted a proposal on the

[5] I do not include 'worker rebellions' during the Cultural Revolution, which stirred up all social groups.

union reform to the Party leadership, including a request to legalize the right to strike in a new Trade Union Law, expected to be on the legislative agenda in the next National People's Congress. It even suggested a proactive role of unions in collective action:

> When workers' just rights are infringed and the matter cannot be resolved through the channels of grass roots democracy, unions have the right to lead masses to expose and report [rights abuses] and carry out various forms of legitimate struggle [*hefa douzheng*] to defend workers' legitimate rights.

The phrase "various forms of legal struggle" was said to implicitly encompass "strike." The proposal was brought to the CCP Secretariat for discussion, and, not surprisingly, was denied for the reason that the legalization of strikes could only induce more strikes.[6] As a result, the Trade Union Law, passed by the NPC in 1992, stipulated that there could be no such thing as the right to strike. This not only ruled out collective action as a legitimate form of union strategy, but it also meant that unions did not have a legal basis to support workers' spontaneous collective action. Strikes and other forms of worker collective action are viewed as deviant behaviors that unions have the responsibility to prevent. Such forms of action are commonly termed in the official discourse as "*qunti shijian*" (group incidents) or "*naoshi*" (disturbance), which bear negative connotations. The government's attitude toward them involves defusing or suppressing them.

However, even though strikes or any form of collective action are not recognized by the government as workers' legal rights, they have occurred widely across the country when desperate workers could find no other channels for redressing their grievances. Official statistics show that in the past few years over three million workers were involved in collective action, including strikes, demonstrations, sit-ins, and collective petitions. Technically, strikes or other forms of collective action do not seem to be against any laws—they are not expressly prohibited, despite the removal of the "freedom of strike" from the constitution. But such actions are apparently not protected by any law either. As a matter of fact, the government could criminate them for disrupting public order or declare them illegal by applying the Law on Demonstrations and Assemblies, which requires that both be pre-approved by local public security bureau. Since no such action can actually obtain official approval, all collective protests that actually take place can be regarded as unlawful assemblies (*feifa jihui*). Moreover, some spontaneous protests turned nasty, causing disruptions (such as the blocking of traffic and the occupation of factories). Thus the government could always find excuses to suppress these actions. Collective protests were often put down in the name of maintaining public order, especially those that had an explicit disruptive effect. High-profile protest incidents that involved thousands of people in the past few years, such as those that took place in a molybdenum mine at Yangjiazhangzi, Liaoning Province, in 2002, in Liaoyang

[6] The above account is based on Chen Ji's work (Chen, 1999: 142–143). Chen Ji was the former Director of Research Office, ACFTU.

in 2002, and so on, were all dispersed by the police (Financial Times, April 4, 2000). Small firm-based protests, as in the ZZPM and ZZPE, also were met with an overwhelming police force when they were perceived by local governments as "disturbing social order." The government was particularly alert to collective action that was organized or cross-enterprise. The demonstration in Liaoyang in 2002 was a cross-enterprise mobilization that attracted thousands of laid-off workers from six enterprises. It invited a swift crackdown by the local authorities. Four worker leaders were arrested and two of them received harsh sentences without an open trial.[7]

Of course, given how widespread these protest incidents were, the government could not suppress them all by force. In fact, many worker protests ended up with some concessions from the government and employers, however limited. They were a clear indicator that strikes or collective action could make a difference by exerting pressure on the government and employers and forcing them to respond to workers' demands. For example, when workers from the WTC factory in Luoyang faced wage arrears for months and believed that the downfall of their enterprise was caused by the corruption of the manager, they launched a protest demanding that their livelihood allowance be delivered and the corrupt manager dealt with. Initially, instead of responding to the workers' demands, the local authorities only tried to defuse their action through the persuasion of union cadres. But the workers refused to back down, and instead, planned to escalate their action by blocking the main street in the city. To avoid "social instability," the local authorities finally decided to deliver assistance to the workers and arrest the corrupt manager (Chen, 2000). In another case, workers in a Singaporean-owned factory felt strong discontent with the management as it refused to sign a collective contract, neglected production safety, and often verbally assaulted employees. They demanded the union to do something to fix the problems and threatened to act on their own otherwise. The union, sympathetic to the workers, organized a strike that lasted a few days. Management was forced to negotiate with the union, mediated by the local labor bureau. The strike ended up with management's accepting all the demands raised by the workers in the strike (Chang, 2002).

Even in those cases in which the government authorities used force to suppress the demonstrations and rounded up their leaders, they still had to pacify workers by meeting some of their demands. In the Liaoyang case, for example, after the protest was put down with the jailing of its leaders in March 2002, the municipal government immediately paid 50% of back wages in May and all of them in June. It also reimbursed all medical fees that had been denied to the workers for years and subsidized the workers with 20 million *yuan* to cover housing, children's health, medical insurance, labor insurance, heating, and so on (https://host23.ipowerweb.com/~gongnong/bbs/read.php?f=3&i=82704&t=82704#reply_82704). Similarly, although the local authorities broke up the workers who occupied the ZZPM and detained their leaders, they finally

[7] For a detailed discussion of worker protests in Lianyang as well as other Northeast cities, see "Paying the Price, Worker Unrest in Northeast China," Human Rights Watch, July 2002, vol. 14, no. 6, http://www.hrw.org/reports/2002/chinalbr02/index.htm#TopOfPage.

conceded to the workers' demand to terminate the privatization scheme that the workers perceived as unfair and illicit.

At the national level, the wave of labor unrest in the country has forced the government to be aware of the thorny labor issue and take measures to mitigate it. For example, after the 2002 protest in Northeast China, the government speeded up the implementation of the urban minimal social insurance program. Just over 20 million urban poor benefited from this program in 2002 and the number increased to 23 million in 2004. Labor protests in Daqing and Liaoyang forced the government to end the practice of a one-time severance package, calculated on the basis of the number of years served (*maiduan gongling*), that had been introduced in 2000 in the petrochemical sector. The government also reiterated that reform schemes of a state- or collective-owned enterprise must be approved by its Staff and Worker Congress. In the third plenary meeting of the Sixteenth Central Committee, the CCP declared that its strategy was to "revitalize the Northeast" (*zhengxin dongbei*), promising more funds for the reconstruction of the rust-belt industrial area. Prime Minister Wen Jiabao toured the Northeast three times, which showed the government's deep concern for that turbulent area.

Nevertheless, the collective action that brought favorable outcomes for workers did not reflect the exercise of any collective rights. In fact, on most occasions, it amounted to what is called "collective bargaining by riots" (Tarrow, 1994: 37), a phenomenon that also reflects workers' lack of the right to organize. These actions are not regularized, as there are no institutionalized mechanisms to accommodate them. The extent to which they could make a difference is thus contingent on how "chaotic" a situation they had created is and whether the government or employers have alternative means to defuse the situation. Even when these actions were eventually responded to with concessions from local authorities, the latter could still treat them as *naoshi* (disturbance) and punish their organizers.

The right to bargain

Collective bargaining is a process of negotiation between representatives of a union and employers in respect of the terms or conditions of the employment of employees. As an institutional mechanism that has the most direct influence on workers' wages, benefits, and working conditions, collective bargaining is premised on workers' right to organize (or to put it another way, it is an exercise of such a right)—and to strike. The right to organize empowers workers to bargain as a collective with employers, while the right to strike is the last resort for workers when negotiations fail. Collective bargaining is thus a derivative right from the two other collective rights.

Without the rights to organize and strike, Chinese workers do not have any power to bargain with employers. The existing collective contract system, which is supposed to be based on collective negotiation (*jiti tanpan*), does not reflect workers' collective right. The system began to be experimented with in a few selected provinces and cities in 1994. By the end of 2003 there had been about 672 thousand collective contracts covering 1.214 million enterprises and 103 million employees (Chang, 2004). The legislative foundation for this practice was first laid down in the 1992 Trade

Union Law, while the 1994 Labor Law provided a more detailed specification of its character. The legislation was supplemented thereafter by three major administrative decrees. The Ministry of Labor issued "Provisions on Collective Contracts" in 1994, emphasizing that the collective contract should be concluded on the basis of "equality and unanimity through consultation." It also issued "Trial Methods of Collective Consultation on Wages" in 2002 that required that agreement should be reached within enterprises on the system of wages, the forms of wage distribution, and the level of wages through equal consultation. The ACFTU issued "The Trial Methods of Trade Unions' Participation in Equal Consultation and Signing Collective Contract" in 1995, specifying trade unions' responsibilities in collective consultation.

However, the collective contract system by no means amounts to collective bargaining. First of all, in contrast to the practice in capitalist countries, where bargaining grew out of struggle and a process of institutionalization, collective contracts in China were implemented top-down by government agencies. The ACFTU initially acted alone to encourage factory unions to sign collective contracts with management. Enterprises, however, did not respond enthusiastically. This forced the ACFTU to seek the support of the government. The campaign only really gained momentum when it finally secured the endorsement of the government (Clarke et al., 2004). In May 1996, a joint circular endorsing the implementation of collective consultation and collective contracts was issued by the Ministry of Labor, the ACFTU, the State Trade and Economic Commission, a body responsible for SOEs, and the China Enterprise Management Association—the official employers' organizations. The four bodies required their own subordinates at all levels to jointly ensure the implementation of the collective contract system. Though a joint effort, the ACFTU played the key facilitating role in the campaign, providing model contracts to enterprises and setting numerical targets for local unions to achieve.

The manner of top-down implementation did result in a surge of signing of collective contracts in both SOEs and non-public enterprises in a short time. However, being carried out mainly to meet the targets set by superior bodies without a meaningful representation of workers in the process, collective contracts remained largely formalistic and ritualistic, having limited effects on labor relations. Contracts were often worked out by union cadres who were subordinate to management. Workers were seldom consulted before the "negotiations," nor informed of the contents of the contracts thereafter. Many workers were simply not aware of the existence of a collective contract in their enterprises. Because no real negotiations over specific terms of employment actually took place, collective contracts, modeled on the version supplied by the higher union, with only minor modifications,[8] were often empty in content or became a reprint of the existing labor laws and local regulations,[9] which did not directly address workers' practical concerns in the workplace.

[8] For example, Warner and Ng investigated 62 medium and large SOEs and joint ventures in Shenzhen and found that most firms closely followed the model supplied to them, making only minor modifications (Warner and Ng, 1999).

[9] According to an investigation, over 50% of items of some collective contracts were copied from labor laws and local regulations (Jiang Yin, http://www.7town.net/viewthread.php?tid=74).

For example, in an economic zone in Shanghai, where I conducted fieldwork, the collective contract signed by a joint union and a group of enterprises contained nothing more than minimal labor standards stipulated by relevant laws and regulations, such as a forty-hour work week, compensation for overtime, the prohibition of child labor, and so on (Interview, May 2006).

Trade unions' structural position in enterprises also considerably limited their role in the signing of collective contracts. While enterprise unions are formally part of the ACFTU, they are organizationally subordinate to management. According to a 1981 government document, union chairs at SOEs enjoy the same treatment and status as a vice-Party secretary or a deputy director of the enterprise. In most SOEs, it is vice-Party secretaries or deputy directors who hold concurrent posts of union chairmen. Unions' organizational dependence on the party and management creates a formidable obstacle to their representative function. In the process of collective consultation, union cadres rarely raised any real concerns of workers or pressed management for better terms for workers. In some enterprises, collective consultation was steered by a tripartite leading group with the secretary of the Party committee as the head and chair of the union and the director as the deputy. This arrangement ensured that the Party was in control of the process, in which the management and union were combined together by the leading group without even a formal division of interests between them. In this way, as some scholars point out, there is a total absence of "parties" in the negotiation process and therefore a collective contract could be quickly and easily produced to fulfill the quota assigned by higher authorities (Taylor et al., 2003).

The collective contract system tends to be taken more seriously in a few large foreign-owned and joint venture enterprises. But the fact that these enterprises could offer better terms for workers seemed to have little to do with any direct involvement of workers in negotiations. Rather, it was because the employers from industrialized nations were used to collective bargaining and were eager to appear law-abiding in China (Taylor et al., 2003: 201). However, in most private and foreign-owned enterprises, which are beyond the reach of the ACFTU, collective contracts either did not exist or were implemented only in name. Some of these enterprises did have unions, but they are controlled by employers, with their relatives or managerial personnel as heads.[10] In a few cases where union cadres were elected, they were unlikely to play any proactive role in pressing for better terms in negotiations, as they were susceptible to retaliation from employers.

In sum, thanks to the lack of an equal position to that of employers and the ability to represent workers, unions have no power to negotiate with employers over the terms and conditions of employment. The collective consultation and contracts at best serve as a mechanism for the government to monitor the enforcement of labor laws and the implementation of labor regulations (Clarke et al., 2004), and hence

[10] For example, an investigation conducted in Tangshan city shows that 60–70 of union chairmen in private enterprises were relatives, and most of the rest were managerial personnel. [Zhongguo laogong guancha (China Labor Watch), October 31, 2000. http://www.chinalaborwatch.org.]

avoid overt conflicts. For this mechanism to work, trade unions, if serious about collective contracts, only need to pursue close collaboration with labor officials rather than seeking a representative role.

Concluding remarks

In Western industrialized nations, the rise of collective labor rights, or "industrial citizenship," was a response of the working class to employers' power in the capitalist economy. They grew out of prior existing civil rights and political rights and were an extension of these two types of rights to workers as a generic social category. The evolution and institutionalization of such collective rights are the basis for the development and establishment of institutions of industrial relations as well as the welfare regimes that ensure workers' social rights. The evolving trajectory of "industrial citizenship" in the West, rooted in its historical development, does not necessarily apply to other social contexts.

Pre-reform China was a society where workers enjoyed basic social and economic entitlements without having substantive collective rights. But as China moves to a market economy and the state abandons its paternalist role, how workers' individual rights can be effectively protected from abuses by employers becomes problematic. The government's approach is to manage labor relations through laws that codify workers' individual rights and specify grievance procedures. It is unfair to say that workers cannot benefit from the newly established legal framework aimed to protect their rights. But very often, these laws are ignored by employers, while redressing rights' abuses has to rely on workers' personal efforts—or collective unrest. Workers have had little influence on the terms and conditions of employment, such as wages, hours of work, working conditions, and grievance procedures, as well as workplace management. The above factors point to the lack of collective rights as a major cause. Collective rights, in other words, become necessary for safeguarding workers' individual rights and their status in labor relations as the state has abandoned its paternalist role. China's labor legislation since the reform, however, has failed to accommodate such changes in the economic structure by granting workers such rights.

The state's refusal to grant substantive collective rights to workers is rooted in both its entrenched Leninist political tradition and current developmental strategy. Despite having experienced economic transformation, the Chinese regime remains Leninist politically and is far from being ready to give up the existing institutional arrangement in which the ACFTU monopolizes the representation of the working class. It perceives independent unionism as subversive and threatening to the political order. Such a perception has almost been a consensus in the leadership since the Polish Solidarity Movement in the 1980s. Political leaders tend to habitually draw an analogy between independent unionism and the Polish Solidarity Movement, and thus suspect its motivations and suppress it. China's development model that highlights its competitiveness resting on cheap labor also inhibits collective labor rights. In this regard, the Chinese state resembles its counterparts in the developing world that have also sought fast economic growth under authoritarian control (Deyo, 1987, 1989). Curbing labor in order to create a good business climate is one

of the most striking dimensions of such states. With its Leninist institutions, the Chinese state is obviously more effective than authoritarian developmental states in restricting workers' ability to act collectively.

The lack of collective rights is one of the major factors that render workers' individual rights vulnerable, hollow, unenforceable, or often disregarded. Workers become defenseless in the face of employers' power or have to fight for their rights as individuals. It has also hindered the development of labor institutions based on an equal relationship between workers and employers. Some Chinese labor scholars as well as union officials have advocated a "collaborative" model of industrial relations as opposed to a "confrontational" one. With no recognition of the importance of substantive collective rights in new labor relations, this view still maintains hope that the anachronistic system of "workers' democratic management" could provide a solution to intensified labor tensions (Feng, 2005). Yet, this view suffers from some problems. First of all, the old socialist model of workers' participation rested upon workers' "rights" based on their alleged "master status" as well as a general integration of interests of workers and employers. Ineffectual even in the past, this model now has lost its basis with the differentiation of the interests of workers and employers. This view has also implicitly assumed that workers' collective rights would destabilize labor relations, which contradicts the historical experience of many countries. It has also ignored that even a successful collaborative model in other social contexts[11] has actually been premised on the existence of labor's collective rights, only which can make trade unions a real partner in industrial relations. Without "industrial citizenship" and indeed unions capable of exercising collective rights on workers' behalf, workers' participation cannot materialize. The construction of collective labor rights, in short, is a necessary step toward the improvement of labor conditions in China.

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[11] These scholars often like to cite Japan as an example.

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