



Scuola Dottorale di Ateneo
Ca' Foscari Graduate School

Dottorato di Ricerca
in Lingue e Civiltà dell'Asia e dell'Africa Mediterranea
Indirizzo in Studi sull'Asia Orientale

Ciclo XXV - Anno di Discussione 2013

***Labour and Rights in Contemporary China
Beyond the Hegemonic Discourse***

Settore scientifico disciplinare di afferenza: L-OR/21

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Introduction

Even before the Maoist era, labour and rights have always been fundamental components of the international discourse on China. It is not a coincidence that one of the most prominent topics discussed at the first Conference of the International Labour Organization in 1919 was the issue of labour conditions in China.¹ It was then proposed that China should adopt a social legislation, a request motivated more by the desire to protect Western workers from the "unfair" competition of a low-paid Asian workforce - and therefore to maintain social and political stability - rather than by a sincere concern for the plight of the Chinese *coolies*. Almost a century later, domestic political interests in the most developed countries are still determining the international narrative on labour and rights in China, with many voices in Europe and in the United States condemning once again the Chinese authorities for pursuing a development model which does not take into any consideration the misery of the workers, forced to produce in horrific conditions for extremely low wages. And, exactly as in 1919, the faces of those Western workers who have been driven out of work by an impossible competition with the "China price" are still borrowed to cover for political agendas of all colours.

Yet, this narrative does not take into account the fact that in the past twenty years the Chinese authorities have been promoting a strong discourse on the rule of law among their citizens, including the workers. Contrarily to the Maoist era, when only State workers were given a series of *entitlements* in virtue of their higher political status, the new official discourse is universal - it does not distinguish between workers in different industries or ownership sectors - and is articulated in terms of *rights*, guaranteed by an increasingly elaborated body of laws and regulations. To further complicate the matter, the international view of Chinese labour tends to overlook the complexity of the interactions between China and the foreign capital, interpreting the flow of foreign direct investments towards China as

¹ Sibille Van Der Sprenkel, "Labor legislation of the Chinese Soviet Republic", in W. E. Butler (ed.), *The Legal System of the Chinese Soviet Republic*, Transnational Publishers, New York, 1983, pp. 107-113.

an unidirectional process in which the Chinese authorities are omnipotent in setting the rules of the game and do not hesitate to sacrifice the well-being workers in the process. This oversimplified view does not consider the fact that in the past few years various attempts by the Chinese authorities to introduce regulations aimed at empowering the unions and the workers have been systematically thwarted by interferences coming from foreign investors and other actors.

Behind these contradictions, we find a fundamental question: how to reconcile a State which promotes a strong discourse on labour and rights with a reality in which workers are blatantly exploited? Should the Chinese government's commitment to labour rights be taken as simple propaganda or there is more to it? To answer these questions, it is important to understand how the official discourse of labour and rights is produced in China. This can be done only by analysing the dialectic tensions between the actors involved in the legislative process, highlighting the different agendas of the various stakeholders and their structural strengths and weaknesses. In spite of the hugeness of the task, this dissertation aims to be a first pace in the direction of a better comprehension of these dynamics. To achieve this goal, it offers a series of perspectives on how in China State, official union, civil society organizations and workers interact with each other to produce a very peculiar narrative of labour and rights, a narrative which unfortunately is rarely matched by reality.

The first chapter will deal with the role of the State. Moving from an historical overview of the development of the labour market in China and its consequence for the identity of the "Chinese worker", this chapter will describe the process which led the Chinese authorities to adopt a body of labour laws and regulations. It will be argued that the Communist Party's turn to the law in labour relations was motivated more by the need to preserve its legitimacy and maintain social stability rather than by a sincere commitment to the cause of the workers. Particular attention will be paid to the contradictory forces which influence the legislative activity of the Chinese government, with reference to a series of particular cases happened in the past few years, i.e. the Labour Contract Law and the draft regulations on collective bargaining. In general, this chapter will highlight how the labour law in China remains a top-down initiative, in which rights are bestowed on the workers at the behest of a paternalistic State.

The second chapter will consider the role of the Chinese official union, the All-China Federation of Trade Unions (ACFTU). To make sense of the dynamics of an organization of this magnitude, this chapter will focus only on the national level of the union hierarchy,

usually neglected because of its political embeddedness. In particular, the relations between the highest echelons of the ACFTU and the Party will be assessed from an historical perspective, with particular attention paid to the circumstances which led to a series of confrontations between the union leadership and the Party in 1951, 1956 and 1989. It will be argued that today, beneath the appearance of an unreserved submission to the Party, there may be the potential for an "institutional transformism" of the ACFTU which could lead to a more aggressive stance of trade unionism. This chapter will highlight how - even if for the time being the union is still totally subdued to the Party leadership and can barely claim to represent the workers - the necessity for the Party to prevent the risks of such "institutional transformism" allows the Chinese union to play a significant role in the drafting of labour laws and regulations, a factor which significantly influences the official discourse on labour and rights.

The third chapter will deal with the role of Chinese non-governmental organizations (NGOs). While the available literature generally agrees with the idea that these grassroots organizations contribute to legal reform and raise social demands for legal justice, opening new spaces in which the Chinese people can take part in public affairs, this chapter will argue that Chinese labour NGOs are weak and unable to exert any significant influence on the political dynamics which inform the discourse on labour and rights in China. In particular, a detailed analysis of the relations between these organizations and the State, the workers and the international donors will highlight how Chinese NGOs are struggling as a consequence of a substantial lack of "social capital", a situation largely due to their strained relations with both the workers and the State. Without generalizing, it will be suggested that it is important that media, scholars and donors reassess their approach towards this sector of the Chinese civil society by dealing with it in a more pragmatic and less idealistic way.

The fourth chapter will consider the relationship between Chinese migrant workers and the law. On the basis of a survey carried out in 2012 in six Italian metal mechanic companies in Shenzhen and Chongqing, this chapter will tackle the correlation between migrant workers' age and their knowledge and expectations towards the law. It will be argued that in order to gain a better understanding of the shifting dynamics of worker activism in today's China, it is important to avoid easy generalizations about the revolutionary potential of younger migrant workers. In particular, this chapter will put forward the idea that Chinese migrant workers' relationship with the law reflects an attitude of "misinformed enchantment", a term which implicates a basic ignorance of the most elementary provisions of the law but a certain confidence in the ability of the law to protect their rights and interests. While such

attitude may be seen as a proof of the success of the strategy of the Chinese authorities to use the legal system to boost their legitimacy, it will be argued that workers' trust towards the law can become a dangerous source of social tension, especially in the event that expectations are not matched by facts.

The fifth chapter will move from the conclusions reached in the fourth chapter to describe the experiences of those workers who have tested the limits of the discourse on law and rights by trying to address their grievances through legal means. In the first part, this chapter will analyse the various actors whom a Chinese workers can seek in his quest for justice, distinguishing between "institutional actors" - i. e. labour offices, local unions and legal aid centres, letters and visits offices - and "non-institutional actors" - law firms, civil representatives, labour NGOs and the media. After an assessment of the structural limitations which prevent these actors from fulfilling their role, the second part of the chapter will delve into the reality of collective actions in Chinese factories. Although these actions represent the most evident signal of the limits of the Chinese legal system in addressing labour conflicts, it will be highlighted how the Chinese authorities are able to spin these strikes and protests to boost an official discourse of law and rights, ultimately boosting their legitimacy.

Finally, the sixth chapter will resort to the case study of a scandal of slavery in illegal brick kilns in the Chinese countryside to demonstrate the limits of the official discourse on labour and rights in China. In particular, through an analysis of the articles published on the Chinese media from 2007 to 2011 and a series of interviews with people directly involved in the events, it will be argued that, in spite of the fact that the Chinese authorities are promoting an universal and omni-comprehensive idea of the law, this discourse remains extremely weak in context which are socially and geographically marginal, realities where totally different sets of rules apply. Delving into the misery of the relations between slaves and slavers in the "black kilns", this chapter will highlight how, far from being isolated cases, the furnaces are essential in order to understand the reasons why realities totally estranged from the law as the sweatshops are everywhere to be seen today in China.

1.

The Law as a Weapon?

Paradoxes of the Discourse of Labour and Rights in China

For decades "China" and "labour" have been an inseparable pair to Western eyes. Stories of low wages, unpaid salaries, incidents, mass lay-offs and strikes happening in China have been widely and regularly reported by the international press, contributing to the bad reputation of the "world factory."² This, in turn, has nourished the idea that China, thanks to its artificially compressed labour costs, is literally "sucking" jobs from the developed countries, a discourse which became much stronger after 2001, following the Chinese entrance into the World Trade Organization. Furthermore, in recent years a particular credit has been given to the idea that the dynamics of globalization are causing an international "race to the bottom" in labour standards.³ According to this theory, international competition to attract more investments is leading the governments of most developing countries to compress labour costs, causing a chain reaction which in the end drives down labour conditions everywhere in the world. Significantly, although Western trade union activists and politicians usually emphasize the effects of the "China price" on their domestic economies, they usually choose to ignore the fact that - as Anita Chan pointed out in an essay published in

² Anita Chan, *China's Workers under Assault: The Exploitation of Labor in a Globalizing Economy*, M.E. Sharpe, New York, 2001.

³ Ajit Singh and Ann Zammit, "Labour standards and the 'race to the bottom': Rethinking globalization and workers' rights from developmental and solidaristic perspectives", *Oxford Review of Economic Policy*, vol. 20 n. 1, 2004, pp. 85-104.

2003 - the harshest competition is not between the North and the South of the world, but between South and South, with many developing countries ruthlessly competing with each other to attract foreign investments at the expenses of their own workers.⁴

Yet, in spite of such narratives, what strikes the China watcher is not only the widespread exploitation of workers in Chinese factories, but also the fact that such exploitation takes place in the context of a vigorous discourse on labour rights promoted by the State. In particular, while it is generally recognized that the regime of exploitation on the Chinese workplace has much to do with the path of development chosen by the Chinese authorities – a model which strongly relies on labour intensive productions and foreign direct investments – the fact that in the past two decades the Chinese government has adopted a series of laws and regulations which in some cases are favourable to the workers, is usually overlooked. Equally neglected is the fact that such legislative actions have been carried out with great fanfare on the Chinese media, with the authorities mobilizing the whole propaganda apparatus to promote not only the contents of the various laws - for example, in the wake of the adoption of the Labour Contract Law in 2007, the *People's Daily* ran a contest about the Law for its readers - but also the idea that citizens and workers should use these laws to protect their own rights.⁵ In some cases, they even went as far as to disseminate the idea that the law was "a weapon" (*wuqi*) in the hands of the citizens.⁶

How to explain the paradox of a State which on one side employs such a belligerent language to promote a discourse on workers' rights and on the other tolerates the most horrific forms of labour exploitation in the factories on its soil? How to reconcile the narratives which alternatively describe the Chinese authorities as guarantors of workers' rights and emphasize the responsibility of the government in compressing labour costs and fomenting the international "race to the bottom"? To answer these questions, this chapter will analyse the discourse on labour and rights in China, arguing that the Chinese Party-State's turn to the law is motivated by the need to maintain social stability and the necessity to boost the legitimacy of the leading class rather than by a sincere commitment to the empowerment of the workers

⁴ Anita Chan, "A 'race to the bottom': Globalization and China's labour standards", *China Perspectives*, n. 46 March-April 2003, <http://chinaperspectives.revues.org/259#text>. Last access, 9 December 2012.

⁵ The competition was organized by the ACFTU, *People's Net* and *Soho*. Besides being published on the pages of the *People's Daily*, it was publicized in many other avenues, on paper and online. For the questions, see "'Laodong Hetong Fa' wangshang zhishi jingsai" (Online competition on the knowledge of the labour contract law), *Renminwang*, http://poll.people.com.cn/205_ctdzb_001/laodongfa.php. Last access, 11 December 2012. On the way Chinese media promote the labour law see also Daniela Stockmann and Mary Gallagher, "Remote control: How the media sustain authoritarian rule in China", *Comparative Political Studies*, vol. 44 n. 4, April 2011, pp. 436-467.

⁶ Mary Gallagher, *Contagious Capitalism: Globalization and the Politics of Labour in China*, Princeton University Press, Princeton, 2005, p. 98.

and citizen. After an historical overview of the development of the labour market in China, with its consequences on the identity of the Chinese worker, this chapter will describe the process which led the Chinese authorities to adopt an ever increasing body of labour laws and regulations. Particular attention will be paid to the contradictory forces which influence the legislative activity of the Chinese government and to the possible consequences of the latest developments in the labour market.

The end of the Chinese worker

In the Maoist era, the life of the Chinese worker revolved around the structure of the "labour unit" (*danwei*).⁷ Within the *danwei*, the Chinese worker not only performed his productive functions within the State economic plan, but could also satisfy all his primary needs. Labour units included schools and kindergartens for the education of his children, medical facilities where he could be treated in case he fell ill, houses to accommodate his family, public canteens and whatever else he could ever need. It was a good bargaining for both the worker, who could take advantage of all these services for free, and the State, which could benefit from a docile workforce. Not that the worker had much of a choice, since in Chinese cities at the time there were no private markets for labour, real estate or even health insurance and education. In a situation in which the State monopolized the public welfare, being kicked out of a *danwei* was far more than a form of social ostracism: it was a matter of real survival. As Andrew Walder pointed out in his masterpiece *Communist Neo-Traditionalism*, the authority relations in the labour units put the workers in a position of weakness and subordination, something which he defined as a form of "organized dependence."⁸ According to his analysis, this dependence had three layers: on the first layer, the Chinese worker was bound socially and economically to his workplace; on the second, he depended politically on the management and the Party; on the third, he was linked personally to his supervisors.⁹ In such a context, mobility was virtually non-existent and workers occupied the same position for decades, in an employment model well described by the image of the "iron rice bowl" (*tiefanwan*).

Things started to change in the early Eighties, first with the introduction of specific provisions regulating labour relations in the Special Economic Zones - a step which in the

⁷ Lü Xiaobo and Elizabeth Perry (eds.), *The Changing Chinese Workplace in Historical and Comparative Perspective*, M.E. Sharpe, London, 1997.

⁸ Andrew Walder, *Communist Neo-Traditionalism*, University of California Press, Berkeley, 1986.

⁹ *Ibid.*, p. 13.

beginning affected State workers only marginally - then with the early attempts to introduce a labour contract system in the State sector.¹⁰ Trials with labour contracts - an institution which had been abandoned in the wake of the nationalization of the industry in the late Fifties - were undertaken on a local basis between 1982 and 1983, then in 1986 a series of new regulations provided that labour contracts were to be signed for all new hires in the State sector.¹¹ Although for more than a decade this rule was scarcely implemented, the introduction of the labour contract system put an end - at least in theory - to the lifetime employment model of the *danwei*. It was a milestone in the Chinese labour reform, not least because of the impact of labour contracts on workers' perception of the workplace. Once workers could not trust the willingness and ability of the authorities to satisfy their needs anymore, their dependence on the State started to break down. It was the beginning of a slow and painful decline for the labour units, a decline which - as we will see shortly - would take almost fifteen years to run its course, leaving in its trail dozens of million of disgruntled workers.

As Luigi Tomba noted in his *Paradoxes of Labour Reform*, "in the initial phase of labour reform, in fact, it was the internal ability of the enterprise to satisfy workers' needs [...] that was challenged, while in the following phases [...] the choices and the existence of alternatives (and of an external economic reference, both for the enterprise as an administrative and economic entity and for the individual), were the major focus."¹² This choice to prioritize the dismantlement of the social security net and the welfare offered by the *danwei* over other reforms aimed, for example, at creating real estate markets, private health insurance funds or even non-State educational institutions, had tremendous costs for the Chinese worker. The delay of the Chinese government in creating an universal social security net, combined with the progressive marketization of those services which originally were provided by labour units and the impossibility of a consistent share of the workforce to adapt to the mechanisms of the rising labour market, delivered the *coup de grace* to the regime of "organized dependence". This paved the way for a new chaotic regime in the Chinese State sector, a situation which Ching Kwan Lee has defined as a form of "disorganized despotism".¹³ In Lee's words:

"Disorganized" refers to the lack of co-ordination among diverse reform measures, resulting in inadequate mediation of interests among social groups. This provides the institutional context for a

¹⁰ Victor Sit, "The special economic zones of China: A new type of export processing zone?", *The Developing Economies*, vol. 23 n. 1, March 1985, pp. 69-87.

¹¹ Gordon White, "The politics of economic reform in Chinese industry: The introduction of the labour contract system", *The China Quarterly*, n. 111, September 1987, pp. 365-289.

¹² Luigi Tomba, *Paradoxes of Labour Reform*, University of Hawai'i Press, Honolulu, 2002, p. 80.

¹³ Ching Kwan Lee, "From organized dependence to disorganized despotism: Changing labour regimes in Chinese factories", *The China Quarterly*, n. 157, March 1999, pp. 44-71.

despotic regime. "Despotism" denotes three aspects of labour-management relations: labour's institutional dependence on production work for livelihood, the imposition of coercive modes of labour control and workers' collective apprehension of such control as violations of their material interests and moral precepts.¹⁴

This regime of "disorganized despotism" reached the apex in the second half of the Nineties, in particular after 1995, when the Party leadership decided to accelerate the restructuring of the State sector on the basis of the principle of "keeping the big [companies] and letting go the small" (*zhuada fangxiao*).¹⁵ In a few years, millions of workers - many of them middle-aged employees without qualifications or experience salable on the new labour markets - were laid-off with only a small severance pay or minuscule subsidies for up to three years.¹⁶ No reliable figure about these laid-off workers - *xiagang gongren*, literally "workers who have stepped down from the workplace" - has ever been provided by the authorities, but a look at the *Chinese Labour Yearbooks* of the past two decades can give an idea of the massive changes which took place in the late Nineties: while in 1993 the Chinese State sectors employed 141.310.000 people, in 2005 State employees were only 70.010.000, a downsizing of more than 50%.¹⁷ Even the official figures about *xiagang* workers are impressive: in 1997, at the peak of the reform, almost ten million people were officially registered as laid-off workers. From 1997 to 2000, the official number of *xiagang* remained over nine million people, before starting to drop in 2001.¹⁸ What makes these figures so unreliable is the fact that Chinese statisticians did not include in their count important categories as those workers employed by companies which for various reasons had laid off their workforce without providing the necessary certificates (*xiagangzheng*), those who worked in companies which had not established any re-employment service centre (*zaijiuye fuwu zhongxin*) and, more important, those workers who had been laid off by collective enterprises.¹⁹

It is puzzling - to say the least - how the Chinese State has been able to get rid of dozens of million of workers without facing any significant resistance. In his analysis of laid-off

¹⁴ Ibid., p. 46.

¹⁵ Ross Garnaut, Song Ligang e Yao Yang, "Impact and Significance of State-Owned Enterprise Restructuring in China", *The China Journal*, n. 55, January 2006, pp. 35-63.

¹⁶ William Hurst, *The Chinese Worker after Socialism*, Cambridge University Press, Cambridge, 2012.

¹⁷ *Zhongguo Laodong Tongji Nianjian 2006*, Zhongguo Tongji Chubanshe, Beijing 2006, p. 24.

¹⁸ Hu Angang, Sheng Xin, "Urban unemployment in China: A background analysis (1995-2003)", in Grace Lee and Michael Warner (eds.), *Unemployment in China: Economy, Human Resources and Labour Markets*, Routledge, London and New York, 2007, pp. 36-62.

¹⁹ Hong Yung Lee, "Xiangang: The Chinese style of laying off workers", *Asian Survey*, vol. 40 n. 6, 2000, pp. 914-237; Dorothy Solinger, "Why we cannot count the 'unemployed'?", *The China Quarterly*, n. 167, September 2001, pp. 671-688; Linda Wong and Kinglun Ngok, "Social policy between plan and market: Xiangang (off-duty employment) and the policy of the re-employment service centres in China", *Social Policy & Administration*, vol. 40 n. 2, April 2006, pp. 159-173.

workers' activism, Cai Yongshun exposed some of the strategies employed by the Chinese authorities to prevent the emergence of a strong and organized labour movement among laid-off workers in the industrial core of the country. First, they tried to reduce worker resistance by building consensus with them, scaling up the propaganda on the necessity of such measures to save the economy and blaming the workers themselves for their unemployment; second, they resorted to sequential layoffs and targeted allowances and bonuses to divide the workers and prevent the emergence of leaders; third, they imposed exemplary punishments on organizers instead of average participants.²⁰ Yet – contrarily to all provisions – such mass layoffs did not put an end to the employment model of the labour unit, but merely marked its transformation. In spite of all the forecasts about the "death of the *danwei*" and the "smashing of the iron rice bowl" heard in the Nineties, in the past decade the Chinese authorities have been able to retain and develop a nucleus of State enterprises in core sectors like telecommunication, infrastructure, resources and banking. As Luigi Tomba and Tang Beibei have argued in a recently published paper, significantly titled *The work-unit is dead. Long live the work-unit!*, the *danwei* is far from being out of fashion.²¹ On the contrary, a reinvention of the role of the socialist labour unit is under way in three main economic and political functions of "managers of the population, employers, and distributors of public goods and privileges to their members."²²

Getting back at the Eighties, while State workers were struggling with the new regime of "disorganized despotism", workers in the burgeoning private sector were not faring much better. Except for those qualified enough to be an asset to their employers, the vast majority of the employees in the new labour intensive private industries which were springing up all over the country were migrant workers coming from the countryside, the so-called *nongmingong*. Agricultural reforms in the late Seventies – as well as a relative relaxation of the grip on internal migrations – had released a massive surplus of rural workforce and this, in turn, had boosted the economy of the coastal areas, starting from the Special Economic Zones. Hein Mallee divided the first two decades of reforms in four periods: first, a period from 1978 to 1984 in which there was a wide implementation of the agricultural reform, but the mobility of labour was still limited; second, a period from 1985 to 1988 in which industries sprung up in the countryside and internal migrations started becoming a mass phenomenon; third, a short

²⁰ Cai Yongshun, *State and Laid-Off Workers in Reform China: The Silence and Collective Action of the Retrenched*, Routledge, London 2006.

²¹ Tang Beibei, Luigi Tomba and Werner Breitung, "The work-unit is dead. Long live the work-unit! Spatial segregation and privilege in a work-unit housing compound in Guangzhou", *Geographische Zeitschrift*, vol. 99 n. 1, pp. 34-47.

²² Ibid.

interlude from 1989 to 1991 in which the economy hit a rough patch, but the flow of workers from the countryside continued unabated, taking the form of a threat in the public perception in the urban areas; finally, a new era opened by Deng Xiaoping's 1992 "Southern Tour", in which the Chinese economy resumed its growth, but the benefits of the economic development started being distributed in a more and more unbalanced way.²³

This chronology may be updated with two more phases: a fifth phase, from 2003 to 2008, in coincidence with the rise to power of Hu Jintao and Wen Jiabao, when the Chinese authorities started promoting a strong discourse on the need to achieve a sustainable model of development and introduced a series of social laws aimed at protecting workers' rights, all of this accompanied by a new wave of propaganda work which emphasized the importance of migrant workers' contribution to the economy; and a sixth phase, from 2009 up to today, when the Chinese government has to deal simultaneously with the domestic effects of the global financial crisis and the consequences of an unprecedented labour shortage in coastal areas.²⁴ Yet, in spite of this "labour famine" even in this sixth phase internal migrations remain a massive phenomenon. Not only in China in 2011 there were more than 250 million migrant workers, but also, as we will see more in detail in the fourth chapter, a generational shift is taking place among Chinese migrant workers, with the rise of what the Chinese and foreign press has defined as a "new generation of migrant workers" (*xin shengdai nongmingong*).²⁵

Although the Chinese authorities had been employing cheap manpower from the countryside in urban industrial projects as soon as the Fifties, migrant labour became a distinctive feature of the Chinese economy only in the reform era. With their willingness to work hard for abysmally low wages and virtually no benefits, migrant workers paved the way for another "race to the bottom" within the boundaries of China, unsettling old balances on the Chinese workplace and giving a fundamental contribution to the smashing of the iron rice bowl. While in the first two decades of reforms migrant workers were usually employed by private labour intensive enterprises and therefore were not in any competition with State workers, with the deepening of the reform of the State sector, in the late Nineties they started

²³ Hein Mallee, "Migration, *hukou* and resistance in reform China", in Elizabeth Perry and Mark Selden (eds.), *Chinese Society: Change, Conflict and Resistance*, Routledge, London and New York 2000, pp. 83-101.

²⁴ About the shift in the official discourse after the rise of the Hu-Wen's administration, see David Shambaugh, *Chinese Communist Party: Atrophy and Adaptation*, University of California Press, 2009.

²⁵ National Statistic Bureau, "2011 nian woguo nongmingong diaocha baogao" (Survey report on migrant workers in China in 2011), 27 April 2012, http://www.stats.gov.cn/tjfx/fxbg/t20120427_402801903.htm. Last access, 9 December 2012. On the new generation of migrant workers see Research Centre on the Labour Movement (ed.), *Xin Shengdai Nongmingong: Wenti, Yanpan, Duice Jianyi* (The new generation of migrant workers: Issues, discussion and policy suggestions), Zhongguo Gongren Chubanshe, Beijing 2011.

to compete directly with unqualified laid-off workers on some specific labour markets. This competition became so heated that some local governments decided to introduce regulations to ensure that only people with a local household registration (*hukou*) could work in some industries. For example, even today taxi drivers in Beijing are required to have a local *hukou*, with most of them being former laid-off workers or farmers from the surrounding countryside.

Such competition between laid-off workers and migrants is not limited to the workplace, but involves wider issues of citizenship, in particular for what concerns the rights to benefit from public services. Due to the scarcity of public resources and in order to avoid any possible cause of discontent by the urban citizens, local governments have continued to exclude migrant workers from the provision of public services, perpetuating a form of institutional discrimination based on the *hukou* system.²⁶ Since the late Nineties, various trial reforms aimed at guaranteeing migrant workers' access to public services in urban areas have been attempted locally, but only in the past few years, under the leadership of Hu and Wen, reforms seem to have gained momentum.²⁷ In particular, four places have attracted a lot of attention from the Chinese public in the past two years: Shanghai, where the local administration tried to promote a reform in which the promise of a local *hukou* was used as a "bait" to attract qualified workers and technicians; Chengdu, where the local authorities undertook measures to eliminate any difference between rural and non-rural *hukou* within the end of 2012; Chongqing, where the now fallen leader Bo Xilai launched a massive plan to create new jobs and build low-prices housings, schools and other facilities for the migrant population; and the Guangdong province, where migrant workers were given the possibility to collect points on the ground of their educational level, tax record, civic deeds and other criteria, to obtain a local *hukou*.²⁸ Unfortunately, all these reforms have shown significant shortcomings - especially because of the limited public resources at disposal and the unwillingness of migrant workers to give up their rural land - and at the moment a blueprint for further reforms is still lacking.²⁹

In the urban labour markets of today's China, migrant workers and former laid-off

²⁶ On the origins of the *hukou* system, see Cheng Tiejun and Mark Selden, "The origins and consequences of China's hukou system", *The China Quarterly*, n. 139, 1994, pp. 644-678.

²⁷ For an overview of the trial reforms of the *hukou* up to the early 2000s, see Fei-ling Wang, "Reformed migration control and new targeted people: China's *hukou* system in the 2000s", *The China Quarterly*, n. 177 March 2004. pp. 115-132.

²⁸ Gong Yufei, Li Haoyu, "2010 Zhongguo huji gaige yuqing" (Public opinion of Chinese reforms of the household registration system 2010), in Xie Yungeng (ed.), *Zhongguo Shehui Yuqing yu Weiji Guanli Baogao*, Shehui Kexue Wenzhai Chubanshe, Beijing 2011, pp. 116-136.

²⁹ The failure of the Guangdong experiment was widely discussed on the Chinese media. "Guangdong jifenzhi tui huji gaige, bufen youxiu nongmingong fangqi chengshi" (The point system in Guangdong promotes the reform of the household registration, some outstanding migrant workers give up the city), *Sina*, 29 June 2010, <http://news.sina.com.cn/o/2010-06-29/044917723666s.shtml>. Last access, 11 December 2012.

workers are not alone in competing for low-end jobs. In a surprising turn of events, in the past few years more and more young graduates have joined them among the ranks of what Dorothy Solinger has labelled as a "new underclass."³⁰ According to official data, in 2011 more than six million students graduated from Chinese universities.³¹ Six months after graduation, 570 thousand of them had not been able to find a job and had joined the ranks of the so-called "ant tribe" (*yizu*), a popular term which in general indicates young educated under-employed or unemployed workers.³² How did this come to pass in a society which has a long history of crediting education as the main channel of social ascent? Even in this case, all started in the late Nineties, in the wake of the 1997 Asian economic crisis. In the second half of 1997, at a time when the Chinese authorities were downsizing the State sector, the slowing of the economy due to sluggish demand was a worrying sign. Furthermore, more than three million high school students were expected to graduate in 1999 and since only a tiny fraction of them would have had a chance to enter universities, this would have put serious constraints to a labour market which was already too crowded. In such circumstances, the Chinese authorities decided to widen the access (*kuozhao*) to the university system.³³ Between 1998 and 1999, enrolment in Chinese universities grew from little more than a million students to well over 1,5 million students - a growth rate of 41,7% - and it has growing steadily ever since.³⁴

Unfortunately, as Bai Limin has pointed out, at the time "China's socio-economic conditions and the structure of the higher education system were unprepared for such a rapid growth in enrolment in tertiary institutions. While China's labour market was unable to absorb the increased number of university graduates, the old framework of China's higher education system could not adapt to the market demands."³⁵ Besides a worsening in the quality of education provided by Chinese tertiary institutions, this process of *kuozhao* led to a new wave of graduate unemployment and under-employment. After 2003, when the first batch of graduates under the new regime entered the labour market, many voices on the Chinese press expressed their concerns about the worsening labour conditions for Chinese graduates, with an op-ed on *People's Daily* in 2007 going as far as to ask the readers whether "Chinese

³⁰ Dorothy Solinger, "The creation of a new underclass in china and its implications", *Environment & Urbanization*, Vol. 18 n.1, April 2006, pp. 177-193.

³¹ "Lanpishu cheng jin 57 wan 2011 jie daxue biyesheng shiye" (A blue book claims that 570.000 students who graduated from university in 2011 are unemployed), *Beijing Wanbao*, 11 June 2012, <http://news.sina.com.cn/c/2012-06-11/154224573383.shtml>. Last access, 9 December 2012.

³² About the "ant tribe" see Lian Si (ed.), *Yizu: Daxue Biyesheng jujucun shilü* (The ant tribe: a record of the villages of the graduates), Guangxi Shifan Daxue Chubanshe, Guilin, 2010.

³³ Bai Limin, "Graduate unemployment: Dilemmas and challenges in China's move to mass higher education", *The China Quarterly*, n. 185 March 2006, pp. 128-144.

³⁴ Ibid.

³⁵ Ibid., p. 143.

graduates should work as cleaners."³⁶ Even if in the past few years the unemployment rate of young graduates has been dropping, the average salary of young Chinese with a tertiary education is enough to give an idea of how the situation has deteriorated in the last decade: while those students who graduated in 2011, six months after graduation on average earned 2.766 yuan (287 yuan more than in 2010), in the same year migrant workers employed by others earned 2.015 yuan a month (360 yuan more than the previous year) and self-employed migrants earned 2.684 yuan (458 yuan more than in 2010).³⁷ In other words, in an unforeseen twist of the reforms, young graduates are now directly competing with their migrant counterparts on the labour market.

Laid-off workers, migrant workers and "ants", with their distinct backgrounds, interests and aspirations, are all components of the Chinese social landscape in the reform era. They are different faces of the "Chinese worker", the almost mythological characters which is usually summoned in discourses about the evils of exploitation in China. While it could very well be argued that there never was such a figure in China - in fact, even on the relatively uniform background of the labour units, workers had different interests to protect according to their position within the labour hierarchy - it is also undeniable that the reforms have introduced further layers within the Chinese workforce, making the idea of the "Chinese worker" completely outdated. Even more significant is the fact that the reforms have definitely shattered the social pact between workers and authorities on which the legitimacy of the Party-State was based in the Maoist era. While this fragmentation and segmentation of the working class can be seen as the result of a savvy strategy by the Chinese authorities, eager to play Chinese workers against each other, manipulating their divergent interests in order to prevent the rise of a strong and organized labour movement, in fact these developments have challenged the very foundations of the Party legitimacy. It is in such a context that the discourse on workers' rights made its entrance in China.

From "sense of mastery" to "rights"

In the context of the "organized dependence" of the pre-reform era, the concept of "rights" (*quanli*) was marginal in the State discourse on labour. According to the

³⁶ "Daxuesheng gai bu gai dang qingsaogong?" (Should university students work as cleaners?), *Renmin Ribao*, 17 April 2007, p. 11.

³⁷ For these data, see "A blue book claims that 570.000 students who graduated from university in 2011 are unemployed", *Beijing Wanbao*, 11 June 2012, cit.; National Statistic Bureau, "Survey report on migrant workers in China in 2011", 27 April 2012, cit.

Constitutions adopted between 1954 and 1982, Chinese workers' had a "right to work" (*laodong de quanli*), a "right to rest" (*xiuxi de quanli*) and a "right to receive material help" (*huode wuzhi bangzhu de quanli*).³⁸ Yet, more than proper rights, these were entitlements - well summarized by the image of the "iron rice bowl" - which the Party-State accorded to the workers in virtue of their high political status in Communist China. To furthermore complicate the matter, since the Party's legitimacy was largely grounded on its claim to be "the vanguard of the working class" (*gongren jieji de xianfengdui*), after the completion of the nationalization of the industry in 1956 there was no more room for a discourse which stated that workers had rights *vis-à-vis* their employers.³⁹ After all, if the Party was the vanguard of the working class - a claim which could hardly be challenged - and all the workers were employed by the State, how could there be any divergence of interests? What was good for the Party-State - it was assumed - was good also for the workers, a reasoning which - curiously - rarely went the other way around. On the basis of these ideological premises, the Chinese worker ceased to have rights, maintaining only a *duty* to work in order to achieve a public good defined from time to time by the Communist leadership. The term which better encapsulates this discourse is "sense of mastery" (*zhurenweng*), a buzzword which in the Maoist and early reform era was used to describe the workers' role as masters of the country. The better definition of "mastery" can be found in the Constitution of 1982, at the article 42, where the legislators wrote:

Citizens of the People's Republic of China have the right as well as the duty to work. [...] Work is a matter of honour for every citizen who is able to work. All working people in State-owned enterprises and in urban and rural economic collectives should approach their work as the masters of the country that they are.⁴⁰

As we will see more in detail in the second chapter, the ideological and practical consequences of the discourse on the Chinese workers as masters of the State caused many squabbles between the Party, the All-China Federation of Trade Unions (ACFTU) and the workers in the years of Maoist rule. In fact, only in the late Eighties the authorities openly

³⁸ The "right to work" can be found at the art. 91 of the 1954 Constitution, art. 27b of the 1975 Constitution, art. 48 of the 1978 Constitution and art. 42 of the 1982 Constitution. The "right to rest" can be found at art. 92 of the 1954 Constitution, art. 27b of the 1975 Constitution, art. 49 of the 1978 Constitution and art. 43 of the 1982 Constitution. The "right to obtain material help" can be found at art. 93 of the 1954 Constitution, art. 27b of the 1975 Constitution, art. 50 of the 1978 Constitution and art. 45 of the 1982 Constitution. For a textual comparison between the various constitutional charts, see Giorgio Melis, "Costituzioni cinesi comparate III", *Mondo Cinese*, n. 46, June 1984, pp. 38-80.

³⁹ Up to this day, after innumerable revisions the Constitution of the Chinese Communist Party opens with these words: "The Communist Party of China is the vanguard both of the Chinese working class and of the Chinese people and the Chinese nation." See "Zhongguo Gongchandang zhangcheng (2012 nian 11 yue 14 ri tongguo)" (Constitution of the Chinese Communist Party, passed on November 14 2012), http://www.gov.cn/jrzq/2012-11/18/content_2269219.htm. Last access, 10 December 2012.

⁴⁰ Art. 42 of the 1982 Constitution of the People's Republic of China.

recognized that there could be divergences between the interests of the workers and those of the State, with Zhao Ziyang, then General Secretary of the Communist Party, going as far as to underline in the opening speech at the Eleventh Congress of the ACFTU in 1988 that "under socialism, the working masses have not only interests in common with other members of the society, that is the general interests of the State, but also their own specific interests."⁴¹ Zhao Ziyang in his speech talked only about "interests" (*liyi*), but admitting that Chinese workers had interests which not necessarily coincided with those of the State was a necessary first step towards the recognition that those same workers also had rights which needed to be protected, a point which was becoming increasingly evident in the private sector, where abuses were most frequent. So, with the deepening of the reforms and the smashing of the "iron rice bowl", the State eventually came to promote a discourse on workers' rights, founding it on a set of labour laws and regulations.

The creation of a Chinese body of labour laws started with a series of regulations aimed at managing labour relations in the newly established Special Economic Zones.⁴² Then, while the decade unfolded, further regulations were adopted to handle labour relations in specific industries, places and ownership sectors. Due to unclear and often contradictory provisions, in the early Nineties the Chinese legal body was so messy that the authorities felt that it was starting to become a hindrance to foreign investments in China. At the same time, episodes of worker unrest - culminated in the popular mobilizations of the Spring of 1989 - underlined the need for the Party to find new ways to boost its legitimacy among the workers and the population.⁴³ In such a context, the Chinese authorities drafted a series of national labour laws which for the first time covers all the companies on Chinese territory in spite of their ownership or industry. Significantly, the first of these laws was passed in 1992 - the year of Deng Xiaoping's "Southern Tour" - and it was a substantial revision of the 1950 Trade Union Law (*gonghui fa*). In 1994, it was followed by the first comprehensive Labour Law (*laodong fa*) ever adopted in China since the Thirties. The drafting of the Labour Law took many years.⁴⁴ The result was a law which on one side gave much of a free hand to the State towards its workforce and on the other was enough broad-worded and difficult to implement to ensure that investors were not scared away by it. Furthermore, the Law showed a clear

⁴¹ Zhao Ziyang, "Zai Zhongguo gonghui di shiyi ci quanguo daibiao dahui shang de zhuci" (Inaugural speech at the eleventh congress of the Chinese union), 22 October 1988, in ACFTU, *Zhongguo Gonghui Dishiyi ci Quanguo Daibiao Dahui Wenjian Huibian*, Gongren Chubanshe, Beijing 1988, pp. 1-10.

⁴² Victor Sit, "The special economic zones of China: A new type of export processing zone?", cit.

⁴³ For an overview of the history of the labour movement in China up to the late Nineties, see Jackie Sheehan, *Chinese Workers: A New History*, Routledge, London, 1998.

⁴⁴ Hilary K. Josephs, "Labor law in a 'socialist market economy': The case of China", *Columbia Journal of Transnational Law*, n. 33 (1995), pp. 559-579.

unbalance between the formulations regarding the protection of workers' individual rights - described in detail and often in terms as advanced as those in Western legislations - and those concerning largely neglected collective rights.

In the following years, the Chinese authorities enacted many other laws in the field of industrial relations. According to the *White Paper on the Socialist Legal System* released by the Chinese government in October 2011, up to the Summer of that year eighteen social laws had been adopted in China, plus a large number of administrative and local regulations on labour relations and social security.⁴⁵ Beside the Labour Law, this document listed the Law on Mine Safety (1992), the Trade Union Law (revised again in 2001), the Law on Prevention and Control of Occupational Diseases (2002), the Production Safety Law (2002), the Labour Contract Law (2008), the Employment Promotion Law (2008), the Law on Labour Dispute Mediation and Arbitration (2008) and the Social Security Law (2011). Far from only taking care of its citizens' right to work and to rest as in the pre-reform era, now the Chinese State has to deal with an increasingly complex system of labour relations, on the background of a diversified and complicated economy. Not only the Chinese authorities today have to handle the risks of a fragmented and competitive labour market where migrant workers, laid-off workers and ants fight for the same low-end jobs, but also have to jostle with the knowledge that in order to ensure the maintenance of a stable economic growth they cannot adopt any measure detrimental to the interests of the investors, both foreign and domestic.

The contradiction between the imperative of appeasing investors and the necessity to protect workers' rights seriously affects the legislative activity of the Chinese government. In fact, while the body of Chinese labour laws and regulations is growing in its complexity and completeness, it maintains two distinctive features: first, it remains the clear result of a top-down activity, with scarce, if any, contribution from the workers; second, it shows a clear intent by the Chinese authorities to balance the demand of foreign investors and the needs of a political legitimacy which largely depends on showing off a certain commitment to the cause of the workers. After all, the Party has never abandoned its qualification as the "vanguard of the working class".

In substance, contrarily to what happened in most Western countries, where progressive labour legislations were introduced in the wake of the rising of strong labour movements from

⁴⁵ Information Office of the State Council of the People's Republic of China, *The Socialist Legal System with Chinese Characteristics*, 27 October 2011, http://www.china.org.cn/government/whitepaper/node_7137666.htm. Last access, 10 December 2012.

below, in China the push for a labour legislation came entirely from above.⁴⁶ As Mary Gallagher has pointed out in her *Contagious Capitalism*, the Chinese authorities turn to the rule of law during the reforms had three fundamental reasons: first, the need for legitimacy after the Party's main foundation of socialism had withered away with the Cultural Revolution and the economic reforms; second, the necessity to open up and integrate the Chinese economy with the outside world, a choice which required the development of a reliable and predictable legal system; third, the acknowledgment by the Chinese State that "rule through law yields more efficient and acceptable control of individuals and social groups that threaten to destabilize the [Party]'s hold on political power."⁴⁷ In fact, even if the Party was able to present the new labour legislation as a proof of its commitment to the cause of the workers, it never had much of a choice if it wanted to gain credibility in front of the international community and maintain some legitimacy in the eyes of the populace. Nevertheless, it is also important to point out – as Mary Gallagher does - that even if the Chinese State had purely instrumental goals in enacting legal reforms, this did not prevent the legal system from having other unpredicted effects, as the erosion of State power and the empowerment of the citizens.⁴⁸ Ultimately, the intentions of the authorities in implementing the reforms and the results of such actions are two completely different matters.

The fact that the Chinese labour legislation is the result of a mediation between different interests is particularly evident if we take into account the process which led to the adoption of the Labour Contract Law (*laodong hetongfa*) and the debate which is currently surrounding the issue of collective bargaining (*jiti tanpan*). The Labour Contract Law - which was passed in June 2007 in the wake of the events which will be described in the sixth chapter - had a long and troubled gestation. After a series of discussions behind closed doors, in March 2006 the National People's Congress decided to publish a first draft of the Law, giving the public a month to comment it. The response was overwhelming: more than 192.000 comments were submitted, 65% of them coming from "ordinary workers", most of them mobilized by the grassroots unions.⁴⁹ Then the situation became very complicated. Not only the Law had become the object of a heated debate between two academic factions, one - led by professor Chang Kai of People's University - which advocated more government control and intervention in labor-management relations to guarantee workers' protection in a still

⁴⁶ Anita Chan and Kaxton Siu, "Chinese migrant workers: Factors constraining the emergence of class consciousness", in Beatriz Carrillo and David S G Goodman (eds.), *Workers and Peasants in the Transformation of Urban China*, Edward Elgar, London, 2012, forthcoming.

⁴⁷ Mary Gallagher, *Contagious Capitalism: Globalization and the Politics of Labour in China*, cit., pp. 101-103.

⁴⁸ Ibid.

⁴⁹ Guan Huai, "Goujian hexie laodong guanxi yu laodong fazhi jianshe" (The establishment of harmonious labour relations and the creation of the rule of law in labour), *Faxue Zazhi*, n. 3 2007, pp. 29-32.

immature labour market, and another - led by professor Dong Baohua of the East China University of Politics and Law - which argued for better enforcement of existing laws, but foreign interests, represented by various chambers of commerce, started to weigh into the debate.⁵⁰

In particular, comments extremely critical toward the first draft of the Law were submitted by powerful bodies as the American Chamber of Commerce in Shanghai (Am-Cham), the US-China Business Council (USBC) and the European Union Chamber of Commerce (EU-Cham). Besides a series of technical criticisms, these documents underlined the impact that such a Law would have had on the desirability of the Chinese market in the eyes of foreign investors. The greatest concern was that the new Law would have led to a rise in labour costs, therefore threatening foreign investments. As the then President of the EU-Cham bluntly remarked to a journalist of the *South China Morning Post* on 26 April 2006, "the strict regulations of the draft new law will limit employers' flexibility and will finally result in an increase of production costs in China. An increase of production costs will force foreign companies to reconsider new investment or continuing with their activities in China."⁵¹ Another argument widely shared by the foreign business community was that it was pointless to enact new regulations, when even the existing laws were not properly implemented. According to the comments submitted by Amcham in March 2006, "It shall be noted that the most significant problem existing in labor issues in PRC is not the lack of protection of laborers by labor laws and regulations, but the fact that the laws are not fully observed. [...] Solving these long outstanding problems shall mainly depend on establishing perfect law enforcement procedures, strengthening law enforcement and putting into effect existing provisions, but not proposing unduly high requirements in addition to existing liabilities of enterprises and destroying existing legal order. Otherwise the abnormal situation that 'the one who violates laws remains unpunished while the one who observes laws is punished' must be deteriorating."⁵² Finally, the Law was deemed not appropriate given the current stage of Chinese economic development. As James Zimmerman wrote to the Standing Committee of the National People's Congress on the behalf of Am-cham in April 2006:

China is still a developing country and its main focus at this stage is still economic development, as correctly pointed out by Premier Wen Jiabao. In making and revising laws, the starting point

⁵⁰ Gallagher Mary and Dong Baohua, "Legislating harmony: Labor law reform in contemporary China", in Sarosh Kuruvilla, Ching Kwan Lee and Mary Gallagher (eds.), *From Iron Rice Bowl to Informalization: Market Workers and the State in a Changing China*, Cornell University Press, Ithaca and London, 2011, pp. 36-60.

⁵¹ Shi Jiangtao, "New labour law would bring conflicts, European firms fear", *South China Morning Post*, 22 April 2006.

⁵² Am-cham Shanghai, "Labor Contract Law Comments to NPC (April 2006), pp. 20-21. The document is no longer available online.

should be the specific circumstances of China, not good intentions, and hastily-set goals... In the highly competitive global economy of today, the welfare of Chinese workers depends not only on protections afforded by labour law, but also depends on the survival and steady growth of the enterprises in which they work. It is not wise to kill the chicken to get the egg.⁵³

The impact of such comments on the legislative process is evident when, among other controversial aspects, we consider the provisions concerning the role of the trade union on the workplace as they appear in the various drafts.⁵⁴ In the first draft - the one which was published in March 2006 - there were at least two provisions which would have strengthened the grassroots union in their dealings with the employers: the first provided that company policies and internal regulations which directly affected the interests of the employees had to be discussed and approved by the trade union, or made after a consultation on equal footing; the second mandated that, when a labor contract could not be fulfilled due to dramatic changes in the objective circumstances on which the labor contract was based and it was necessary to lay off more than fifty employees, the employer had to explain the situation to the company union or all the staff, reaching a consensus (*xieshang yizhi*) before carrying out his layoff plans.⁵⁵ Even if grassroots unions in China are so weak that even with these new powers they would hardly have posed a threat to the interests of the companies, both provisions were drastically revised in the following drafts. Not only the union's right of veto on the internal regulations was expunged, but the final draft also only stated that a company should ask the opinion of the union on the matter of lay-offs involving at least twenty workers or more than 10% of the workforce. In the same fashion, other articles on delicate matters as permanent contracts, non-compete agreements and the signing of labour contracts were substantially changed.

In the months following the passing of the Law, the Chinese media widely echoed the fears of the entrepreneurial community that the new regulations would have led to a "wave of bankruptcies", especially among small and medium enterprises.⁵⁶ It did not matter that the ACFTU and the authorities repeatedly reassured the public that this was not the case, that the

⁵³ Zimmerman's letter is quoted in Mary Gallagher and Dong Baohua, "Legislating harmony: Labor law reform in contemporary China", cit., pp. 47-48.

⁵⁴ Ivan Franceschini, "The new Labour Contract Law of the People's Republic of China: A real step forward for Chinese trade unions?", working paper, Centre of Advanced Studies on Contemporary China, Turin, February 2009, http://www.cascc.eu/images/stories/PDF/working_papers/workingpaper2_09.pdf. Last access, 10 December 2012.

⁵⁵ For an accurate comparison of the formulations in the various drafts, see the appendix to Zheng Gongcheng, Chen Yanyuan (eds.), *Zhonghua Renmin Gongheguo Laodong Hetongfa Shiyi yu Anli Fenxi* (Definitions and analysis of cases related to the Labour Contract Law of the People's Republic of China), Renmin Chubanshe, Beijing 2007, pp. 329-400.

⁵⁶ For instance, on 21 March 2008 the *Southern Metropolis Weekly* ran a cover story titled "A wave of company bankruptcies" (*qiye pochanchao*).

Law would have affected only those companies which had a record of not respecting the labour regulations, that other developing countries - like Vietnam - already had far more restrictive laws governing labour relations: the public discourse was still dominated by criticisms towards the rigidities of the new Law.⁵⁷ Other critics instead chose to focus on the inadequacies of the Law, underlining the fact that its formulations were still too broad to have a significant impact on the Chinese labour market. In order to address this problem, in September 2008 the National People's Congress Standing Committee passed a set of regulations for the implementation of the Labour Contract Law, clarifying some controversial issues regarding the signature of labour contracts, the dynamics of the labour-dispatch system and the conditions for the termination of a labour relation.⁵⁸ Unfortunately, the outbreak of the financial crisis at the end of 2008 weakened the commitment of the authorities to implement the new regulations.⁵⁹ While the financial crisis has rendered the effects of the Labour Contract Law on the palatability of the Chinese market, in July 2012 the Chinese authorities have published a draft Amendment of the Law, drawing as much as 557.243 comments from the public.⁶⁰ Even if the Chinese government had announced its plan to pass this Amendment before the end of the year, in October 2012 a Chinese newspaper reported that the legislative process had to be delayed again due to pressures coming from interest groups connected to Chinese State-owned enterprises, a lobby which benefit greatly from an unregulated labour dispatch system.⁶¹ It came as a surprise when the Amendment was actually passed, on 28 December 2012.

The other example which highlights the complexity of the dynamics which influence the legislative activity of the Chinese authorities can be found in the field of collective bargaining. Although it is almost twenty years that the Chinese labour laws grant workers and employers the possibility to sign collective contracts (*jiti hetong*), since the beginning this peculiar legal institution has been systematically weakened. This happened in at least four

⁵⁷ Deng Jin, "Laodong hetongfa weishenme bu neng xiugai - Zhuanfang laodong hetongfa qicao chengyuan, Zhonghua Quanguo Zonggonghui minzhu guanlibu buzhang Guo Jun" (Why the Labour Contract Law cannot be amended - An interview with Guo Jun, member of the drafting committee of the Labour Contract Law and director of the department of democratic management of the ACFTU), *Nanfang Zhoumo*, 12 March 2008, <http://www.infzm.com/content/3732/0>. Last access, 10 December 2012.

⁵⁸ "Zhonghua Renmin Gongheguo laodong hetongfa shishi tiaoli" (Regulations for the implementation of the Labour Contract Law of the People's Republic of China), 3 September 2008, http://www.gov.cn/zwggk/2008-09/19/content_1099470.htm. Last access, 10 December 2012.

⁵⁹ Sky Canaves, "Factory closures strain China's labor law", *Wall Street Journal*, 17 January 2009, <http://online.wsj.com/article/SB123215043508192065.html>. Last access, 11 December 2012.

⁶⁰ Geng Yanbing, Zhou Chang, "Laodong Hetongfa xiuzheng'an zhengde 55 wan yijian" (The draft amendment to the Labour Contract Law has received more than 550.000 comments), *21 Shiji Jingji Baodao*, 8 August 2012, p. 6.

⁶¹ Jiang Yunzhang, "Laodong Hetongfa xiugai ershen tuiyan" (The second phase of the revision of the draft amendment to the Labour Contract Law has been delayed), *Jingji Guancha Wang*, 27 October 2012, <http://www.eeo.com.cn/2012/1027/235261.shtml>. Last access, 10 December 2012.

ways. First, the confrontational nature of the "collective bargaining" (*jiti tanpan*) - which implies a conflict of interests between employers and employees - has been watered down in a process of "collective consultation" (*jiti xieshang*) based on the assumption that there is a substantial unity of interests between the company and the workers, a sort of "win-win" (*shuangying*) situation.⁶² Second, for reasons of political sensitivity, the coverage of collective agreements has been reduced to a minimum, to the company level. In spite of some local trials carried out since 1999, only in 2008 the Labour Contract Law granted the possibility to sign collective contracts at the industry or local level.⁶³ Third, as we will see in more detail in the fifth chapter, the issue of the right to strike - vital to collective bargaining - has deliberately been kept in a grey area by the Chinese authorities.⁶⁴ Fourth, the official union has been granted a monopoly over worker representation in collective negotiations and has approached the issue in a formalistic way, simply setting quotas of collective contracts to be reached by local unions in every areas, without showing any concern for the contents of these agreements. Therefore, even if in the past few years collective contracts have grown from only 730.589 agreements signed in 2005 to the 1.793.000 signed in 2011 - with a coverage of more than 223 million workers - it is safe to assume that most of these documents are mere paperwork which do not state nothing more than the minimum standards already provided by the law.⁶⁵

While many provinces and localities already have specific regulations on collective consultation, a couple of draft regulations have attracted a lot of attention from the media in 2010, in the wake of a series of strikes which took place in Guangdong province.⁶⁶ While the

⁶² Ronald Brown, "China's collective contracts provisions: Can collective negotiations embody collective bargaining?", *Duke Journal of Comparative & International Law*, vol. 16 n.1, Spring 2006, pp. 35-78.

⁶³ Wang Quanxing and Wang Min, "Gonghuifa 2001 nian xiugai de chenggong yu buzhu", (Successes and shortcomings of the 2001 amendment to the Trade Unions Law), *Huadong Falü Pinglun*, 2002 n. 1, pp. 114-138. Without any legal basis, since 1999 the Chinese government and the All-China Federation of Trade Unions (ACFTU) have been testing of these instruments. Even if in the Regulations on Collective Contracts of 2004 there is no mention about local and industrial collective contracts, in August 2006 the former Ministry of Labor and Social Security (MLSS) promulgated an "Opinion on the development of the work about local and industrial collective contracts", which defines the area of application of these contracts (the highest level is the township), the procedures for the selection of workers and employers' representatives, the possible contents of the collective contract (which can be specific or comprehensive), the procedures for the collective bargaining, etc.

⁶⁴ Chang Kai, "Bagongquan lifa wenti de ruogan sikao" (Some thoughts about the issue of the legislation on the right to strike in China), *Xuehai*, 2005 n. 4, pp. 43-55.

⁶⁵ For the 2005 data see, ACFTU, *ZhongguoGonghui Tongji Nianjian* (Chinese Trade Unions Statistical Yearbook 2006), Zhongguo Tongji Chubanshe, Beijing 2006; for the data on collective contracts in 2011, see ACFTU Research Office, "2011 nian gonghui zuzhi he gonghui gongzuo fazhan zhuangkuang tongji gongbao" (Statistical report situation of the trade union organization and trade union work in 2011), 1 May 2012, available online on <http://stats.acftu.org/template/10002/file.jsp?aid=217>. Last access, 11 October 2012.

⁶⁶ For a list of all the existing local regulations updated to June 2010, see the documents collected in *Jiti Tanpan Luntan Huiyi Baogao (Chongqing 2010)* (Report of the conference on collective bargaining - Chongqing 2010). The conference was jointly organized by the Research Centre on Labour Law and Social Security Law of Peking University, the Research Centre on Labour Law and Social Security Law of the South-Western University of Politics and Law, the Laowei Law Firm and the Laowei Foundation.

Chinese public opinion was still following with apprehension the folding of events in the Honda plant in Foshan, where workers had launched a strike asking for significantly higher wages and the right to elect a representative union, the Guangdong authorities were discussing a revision of the provincial "Regulations on the democratic management of the companies" (*Guangdongsheng minzhu guanli tiaoli*) which could have laid the foundations for a genuine collective bargaining on wage matters. In particular, one article of revised regulations provided that whenever an employer refused a request to start a collective bargaining coming from the workers, he could not fire his employees if they decided to launch a labour stoppage.⁶⁷ Roughly at the same time, the Shenzhen authorities decided to accelerate the legislative process of a city regulation concerning the issue of collective negotiations (*Shenzhen jingji tequ jiti xieshang tiaoli*).⁶⁸ Both regulations should have been approved by September 2010 - a curious timing which, coinciding with a wave of labour unrest, seems to demonstrate the assumption that the Chinese authorities resort to the law as a way to boost their legitimacy - but in a matter of weeks either regulations had been removed from the political agenda, a turnaround which some Hong Kong NGOs attributed to the lobbying of some interest groups based in the British former colony.⁶⁹ Only in August 2012, the Shenzhen authorities have announced that the regulations were again on their agenda.⁷⁰

What now?

In the light of the dynamics described in this chapter, it is now possible to answer the fundamental question raised in the premise: how is it possible to reconcile the narratives which alternatively describe the Chinese authorities as guarantors of the rights of the workers and emphasize their responsibility in compressing labour costs and fomenting the

⁶⁷ "'Guangdong sheng qiye minzhu guanli tiaoli (cao'an xiugai sangao zhengqiu yijian gao)' xiang shehui gongkai zhengqiu yijian" (Publication and request of comments from the public for the "Guangdong regulation on democratic management of the enterprise (draft, third revision for public comments), *Guangdong Renda Wang*, 23 August 2010, http://www.rd.gd.cn/rdgz/flca/201008/t20100823_106165.html. Last access, 11 December 2012.

⁶⁸ "Shenzhen jingji tequ jiti xieshang tiaoli" (Shenzhen Special Economic Zone regulations on collective negotiations), *Shenzhen Shangbao*, 13 August 2010, <http://finance.qq.com/a/20100813/001556.htm>. Last access, 11 December 2012.

⁶⁹ China Labour Bulletin, "China Labour Bulletin supports Guangdong's efforts to establish a collective wage negotiation system", *China Labour Bulletin*, 22 September 2010, <http://www.clb.org.hk/en/node/100884>. Last access, 11 December 2012. See also Li Peng, "Guangdong qiye minzhu guanli tiaoli nanchan beihou" (Behind the scenes of the difficulties of the Guangdong regulations on democratic management of the enterprise), *Caijing Guojia Zhoukan*, 11 October 2010, <http://finance.sina.com.cn/g/20101011/12188757381.shtml>. Last access, 11 December 2012.

⁷⁰ Zhang Wei, "Jiti xieshang tiaoli cao'an chongjin lifa tongdao" (The draft regulations on collective negotiation re-enter the legislative agenda), *Nanfang Ribao*, 29 August 2012, http://gd.nfdaily.cn/content/2012-08/29/content_53847582.htm. Last access, 11 December 2012.

international "race to the bottom" in labour standards? The solution to this paradox can be found in the peculiar nature of the Chinese labour legislation. Even if any legislation in any country is the result of a series of interactions between different interest groups, it is important to bear in mind that China today is an authoritarian country led by a Party which still claims to represent the vanguard of the working class and at the same time finds its legitimacy on an economic performance which largely depends from foreign investments. In a situation in which - as described in the first part of this chapter - the Chinese labour market has been growing more and more complex and the "Chinese worker" has disappeared leaving on its trail a series of new social groups fighting for low-end jobs, the State had no other choice than turning to the Law if it wanted to maintain its legitimacy.

Yet, in a situation where the workers do not have a voice, the official union is in constraints and the legislative activity is subject to the monopoly of a National People's Congress which is little more than a puppet, the Party is in an awkward position. In practice, it has to jostle with totally different interests, representing at the same time workers, union and employers. This confusion is particularly evident in the legislative processes which led to the adoption of the Labour Contract Law, when the Party showed off its willingness to listen to the "masses" by asking for comments from the public and then backed off from the most daring provisions included in the draft heed the voices of some representative of foreign interests. What is beyond doubt in all this is that the labour law in China remains a top-down activity, where rights are bestowed on the workers at the behest of a "benevolent" and paternalistic government. Even if the contribution of the ACFTU to the drafting of the various laws has been often praised, who really spoke for the workers when those laws were being drafted and discussed?

The law is useful to the Party also in another way. It allows the authority to regulate the labour market channelling disputes into officially-sanctioned routes and preventing conflicts from getting out of hand. Furthermore - as we will see more in detail in chapter four - the promotion among the public opinion of the labour laws also has a prescriptive function, preventing Chinese workers from asking for more rights than the government is ready to give. One set of data can give us an idea of the ability of the Chinese authorities in promoting the labour laws among the public: the figure of labour disputes since the early Nineties up to this moment. According to Chinese official yearbooks, in the fifteen years between the passage of the Labour Law and 2009, labour controversies settled by arbitration committees and courts

rose from 48.121 to more than 684.400.⁷¹ While many observers see these figures as the sign of a rising strife on the Chinese workplace, in fact these numbers prove that in the past decades the Chinese workers have become increasingly aware of the existence of laws and official channels where they can address their grievances. Then, of course, the real problem is to understand how many disputes do not go through these official channels due to workers' ignorance or disenchantment towards the law, an issue which will be addressed in the fifth chapter.

Finally, it is important to highlight two developments which in the future could significantly affect the discourse on labour and rights in China. First, the Chinese labour market is going through another phase of transformation, caused by the so-called “migrant labour famine” (*mingonghuang*), a social phenomenon which appeared as soon as 2003. Against all common beliefs, this “famine” is not limited to qualified technical personnel, but involves also ordinary workers. According to a recent study by Zhang Yi and Liu Yingxiang from the Chinese Academy of Social Sciences, there are many reasons behind this major change: the demographic consequences of the only-child policy; the rising education level of Chinese workers in front of a labour market which strongly relies on unqualified labour force; the development of the central and the western areas of the country and the following rise in the labour demand in the inner provinces; the unattractiveness of the low salaries in the manufacture sector; the reduction in the wage gaps among the coast and the interior; the short duration of labour contracts.⁷² Zhang and Liu, among many others, believe that this trend is inevitable and suggest that in order to contrast this famine the only solutions are a change for the better in salaries and labour conditions, a major commitment by the authorities toward the urban integration of the fluctuant population and a greater availability by the employers to invest in the formation of a stable labour force.⁷³ In other words, with this famine, Chinese workers' bargaining power may get boosted.

A second major force which might mould the future of the Chinese workforce can be

⁷¹ The 48.121 disputes refer to 1996, the first year for which there are available data. For the 2009 data see Qiao Jian, "2010 nian Zhongguo zhigong zhuangkuang" (The situation of Chinese workers in 2010), in Ru Xin, Lu Xueyi, Li Peilin (eds.), *2011 Nian Zhongguo Shehui Xingshi Fenxi yu Yuce*, Shehui Kexue Wenzhai Chubanshe, Beijing 2011, pp. 245-260.

⁷² Zhang Yi, Liu Yingxiang, "Laodongli shichang de bianhua ji 'zhaogongnan' wenti diaoyan baogao" (Report on the situation of labor market and the outbreak of the "recruitment crisis"), in Ru Xin, Lu Xueyi, Li Peilin, *2012 Nian Zhongguo Shehui Xingshi Fenxi yu Yuce*, Shehui Kexue Wenzhai Chubanshe, Beijing 2012, pp. 145-161.

⁷³ Wang Ling, "Shi nianjie hou yonggonghuang: Banjiezi chengshihua zhi you" (The labour famine ten years after: the worries of an half urbanization), *Di Yi Caijing Ribao*, 1 February 2012, <http://www.21cbh.com/HTML/2012-2-1/yNMDY5XzM5ODIyNw.html>, last access on 11 December 2012; Zhao Yongping, "Yong mingtian liuzhu nongmingong" (Using the tomorrow to keep migrant workers), *Renmin Ribao*, 23 February 2012, http://paper.people.com.cn/rmrb/html/2012-02/23/nw.D110000renmrb_20120223_2-23.htm?div=-1, last access on 11 December 2012.

found in the macro-economic readjustment undertaken in the wake of the 2008 financial crisis. Since the creation of the first Special Economic Zones in 1978, the Chinese authorities have promoted a development model which was largely export-oriented. This is slowly changing now, with the central authorities who are more active than ever in promoting a new pattern based on domestic consumption.⁷⁴ In this new economic climate, the Chinese worker is not only a screw on the productionline, he becomes first of all a consumer. If we consider that workers with low wages cannot give substantial contributions to a country's consumption, increasing salaries becomes a political priority, as could be seen in the 2011, when twenty-one local governments decided to raise minimum legal wages, with a medium rise of 21,7%.⁷⁵ From this point of view, wage raises are not so much the consequence of workers' activism, as a strategic tool used by the authorities in order to ensure a macro-economic readjustment. Whether these changes will bear a significant impact on Chinese workers' lives for the moment is only a matter of wishful thinking. Only time will tell.

⁷⁴ Li Keqiang, "China deepens strategy of domestic demand expansion in the course of reform and opening-up", *China.org.cn*, 4 March 2012, http://www.china.org.cn/china/2012-03/04/content_24801231.htm. Last access, 11 December 2012.

⁷⁵ "Xiaoshi zuidi gongzi Beijing zui gao, 21 shengshi tigao zuidi gongzi biao zhun" (Beijing has the highest minimum hourly wage, 21 cities and provinces have raised minimum wage standards), *Beijing Chenbao*, 26 October 2011, <http://finance.people.com.cn/insurance/GB/16024067.html>. Last access, 11 December 2012.

2.

The All-China Federation of Trade Unions: Prospects for Institutional Transformism?

Vladimir Lenin was one of the first to fully acknowledge the importance of the union in moulding and guiding the opinions of the masses. In his famous tract *What Is to Be Done?* he declared that all Party members should be active in the unions and consciously seek to influence their membership.¹ Then, in December 1920, during a clash within the Communist Party of the newly established Soviet Union on the issue of the role of the unions, he revisited the issue, declaring that the proletarian dictatorship "cannot work without a number of 'transmission belts' running from the vanguard to the mass of the advanced class, and from the latter to the mass of the working people."² And, as Stalin would have soon realized, what "transmission belt" better than a union in order to convoy the directives of the Party to the grassroots and the moods of the masses to the Party?

These voices from another age are still surprisingly actual when it comes to explain the role of the official union in China, the All-China Federation of Trade Unions (ACFTU, *Zhonghua quanguo zonggonghui*). In fact, even if in the past two decades the ACFTU has made some steps forwards in affirming its role *vis-à-vis* the Party-State, it has never been able

¹ Vladimir Ilych Lenin, "What's to be done?", *Lenin's Collected Works*, Foreign Languages Publishing House, Moscow 1961, vol. 5, pp. 347-530.

² Quoted in Paul Harper, "The Party and the Unions in Communist China", *The China Quarterly*, January-March 1969, pp. 84-119.

to free itself from the grip of the its "big brother", nor to get rid of its cumbersome past. Not only the Chinese union is still organized on the basis of the Leninist structure of "democratic centralism", but it also continues to follow principles which strongly echo the Soviet idea of the "transmission belt."

Yet, even if the relevant literature tends to describe the Chinese union as a monolithic entity, highlighting the structural problems which prevent it from exerting a substantial role in protecting workers' rights, it is important to underline that the ACFTU in reality is more fragmented than it may seem at first sight. Looking beyond the barrage of the official propaganda, it is possible to find an organization which is signed by fractures running not only horizontally, on industrial and local lines, but also vertically, between different levels of the union hierarchy, from the national leading body down to the company level. These fractures might be invisible for the time being, but it is undeniable that, as Anita Chan noted in a paper published in 2003, the ACFTU is "an elephant made up of many parts. Its effectiveness in protecting workers' rights varies from level to level, region to region, and in many cases comes down to the individual union officials."³

And the image of the elephant is indeed an appropriate metaphor to describe the Chinese union today. According to official data, at the end of 2011 the ACFTU had established 2,32 million grassroots unions, 17,4% more than the previous year.⁴ Of these, 1.706.000 (73,5%) were company unions, 5,2% established in State-owned enterprises (SOEs), 4,4% in collective enterprises (COEs), 65% in privately-owned enterprises (POEs), 2% in Hong Kong, Taiwan and Macao enterprises, and 3,2% in foreign-invested enterprises (FIEs). On paper, the unionization rate was impressive: about 3.673.000 companies were covered, for a total membership of 258.851.000 employees, among which 37,7% women and 37,3% migrants, for a total coverage of more than 80% of the Chinese workforce.

To make sense of the dynamics of such a massive organization, it is important to make some distinctions. As Liu Mingwei, Li Chunyun and Kim Sunghoon have recently pointed out, to gain a better understanding of the changing nature of the Chinese union, "it is critical to differentiate union strategies and activities at the national, regional and workplace level, rather than treating the ACFTU as a monolithic institution with a unified strategy."⁵ In

³ Anita Chan, "China and the international labour movement", *China Review*, Summer 2001, pp. 9-13.

⁴ Zhonghua Quanguo Zonggonghui Yanjiushi, "2011 nian gonghui zuzhi he gonghui gongzuo fazhan zhuangkuang tongji gongbao" (Statistical report on the development of the trade union work and organization in 2011), 1 May 2012, available online on <http://stats.acftu.org/template/10002/file.jsp?aid=217>. Last access, 11 October 2012.

⁵ Liu Mingwei, Li Chunyun and Kim Sunghoon, "Chinese unions in transition: A three-level analysis", in Peter

particular, this chapter will focus on the national level, arguing that beneath the appearance of an unreserved submission to the Party there is the potential for a more aggressive stance of trade unionism. A theoretical concept will be particularly relevant in addressing this point, that is the idea of "institutional conversion", a term which, as Kathleen Thelen has defined it, indicates a process in which institutions with a set of goals in mind are directed to other ends.⁶ Such dynamics were primarily observed in studies of regime transition in southern Europe and Latin America, but they also sporadically appear in the field of Chinese studies. Specifically, in the early Nineties political scholar X. L. Ding coined the term "institutional amphibiousness" to underscore the fact that the nature of individual institutions is indeterminate. According to Ding, "an institution can be used for purposes contrary to those it is supposed to fulfil, and the same institution can simultaneously serve conflicting purposes."⁷ The examples he provided included Chinese mass organizations as trade unions, youth associations and women's organizations. More recently, Chen Xi has applied this concept to another agency of the Chinese government, the offices of letters and visits (*xinfangban*), underlining the paradoxical nature of these institutions, which are designed to serve the Party-State but are also usable for popular mobilization.⁸ Other scholars have then employed this theoretical framework to explain the endogenous and incremental institutional change in China.⁹ In this chapter the concept of "institutional conversion" will be adopted to describe the relations between the ACFTU and the Party, underlining how political or economic crisis potentially can press the official union to change its priorities in order to boost its own legitimacy. The awareness of this risk weighs heavily on the relationship between the Party-State and the union, giving the latter some leverage to influence the State legislative activity to its own ends.

Like any other mass organization in a communist country, the ACFTU is part of the State apparatus. This regime of dependency is particularly evident at the national level. Not only the current Chairman of the ACFTU, Wang Zhaoguo, is a member of the Politburo and a vice-secretary of the National People's Congress - the previous one, Wei Jianxing, was also a member of the standing committee of the Politburo - but also the union at the national level

Sheldon, Sunghoon Kim, Li Yiqiong and Malcom Warner (eds.), *China's Changing Workplace*, Routledge, London and New York 2011, pp. 277-300.

⁶ Kathleen Thelen, "How institutions evolve: Insights from comparative historical analysis", in James Mahoney and Dietrich Rueschemeyer (eds.), *Comparative Historical Analysis in the Social Sciences*, Cambridge University Press, Cambridge, 2003, pp. 208-240.

⁷ X.L. Ding, "Institutional amphibiousness and the transition from communism: The case of China", *British Journal of Political Sciences*, n. 24 2004, pp. 293-318.

⁸ Xi Chen, "Collective petitioning and institutional conversion", in Kevin O'Brien (ed.), *Popular Protest in China*, Howard University Press, Cambridge, Massachusetts, 2008, pp. 54-70.

⁹ Kellee Tsai, "Adaptive informal institutions and endogenous institutional change in China", *World Politics*, n. 59 October 2006, pp. 116-141.

enjoys a higher political status than the Ministry of Human Resources and Social Security and the China Enterprise Federation/China Enterprise Director Association (CEC-CEDA).¹⁰ While this institutional embeddedness has gained the ACFTU many criticisms, the leadership of the union has always underlined the advantages of this "special status", at least in terms of a greater ability to influence labour policies.¹¹ According to an official union document, between 2003 and 2008 the ACFTU was involved in drafting more than sixty labour-related national laws and regulations, an achievement which is often flaunted as a proof of the union's commitment to the protection of workers' rights.¹² In particular, in the past two decades the ACFTU has been eager to take credit for the many clauses favourable to the workers included in the various labour laws and regulations, especially the 1994 Labour Law, the 2001 Trade Union Law and the 2007 Labour Contract Law. Indeed, the important role played by the ACFTU in drafting the national legislation on labour contracts has been well documented.¹³

Nevertheless, in order to assess the relations between the Party and the official union at the national level, it is important to adopt a long-term perspective. While the relevant literature often highlights the reasons of the long-standing submission of the official union, less known is the fact that in the six decades since its re-establishment the ACFTU has tried to assert its independence from the Party at least three times, respectively in 1951, 1956 and 1989, in concomitance with significant political and economic crisis. This chapter will offer an overview of the circumstances which led to these confrontations, in the belief that a deeper knowledge of the union history is crucial to gain a better understanding of the dynamics of power today.

The first crisis (1951)

The ACFTU was founded in May 1925 in Canton. Much has been written about the early Chinese labour movement and this is not the place to linger on such a wide topic.¹⁴ It

¹⁰ For a biographical sketch of Wang Zhaoguo see *Baidu Baike*, <http://baike.baidu.com/view/1844.htm>. Last access 17 October 2012. On the political status of the national ACFTU see Mingwei Liu, Chunyun Li and Sunghoon Kim, "Chinese trade unions in transition", cit.

¹¹ The international unions have been the most active in criticizing the ACFTU. In this regard see for example the complaints lodged at the ILO by the International Confederation of Free Trade Unions in the Nineties, online on the ILOLEX database, <http://www.ilo.org/ilolex/english/caseframeE.htm>. Last access, 17 October 2012.

¹² ACFTU, "Gonghui falü gongzuo de huihuang wunian" (Five glorious years of trade union legislative work), *Zhongguo Gongyun*, n. 4 2008, pp. 16-18.

¹³ Mary Gallagher and Baohua Dong, "Legislating harmony: Labour law reform in contemporary China", in Sarosh Kuruvilla, Ching Kwan Lee and Mary Gallagher (eds.), *From Iron Rice Bowl to Informalization*, ILR Press, Ithaca, New York 2011, pp. 36-60.

¹⁴ On the early labour movement see Jean Chesneaux, *The Chinese Labor Movement, 1919-1927*, Stanford

suffices to acknowledge here the fact that the ACFTU was established in the context of activism and social turmoil of the early Twenties, as a coordinating body for the activities of the leftist unions nationwide.¹⁵ Although, it is not completely clear what happened to the ACFTU after the bloody split between the Chinese Communist Party (CCP) and the Nationalist Party in 1927, it is certain that the ACFTU as we know it today was revived in the Summer of 1948, when the Communist Party decided to hold the Sixth All-China Labour Congress.¹⁶ In line with Lenin and Stalin's political theory in those years of consolidation of the political power, the communist authorities had come to see the organization of the Chinese labour movement into a rigid and exclusive hierarchical structure not only as an unavoidable condition to mobilize and control the human resources necessary to rebuild the national economy, but also a good way to substantiate their claim to represent "the vanguard of the working class".¹⁷ At the same time, they were very wary of the political risks involved in allowing the existence of a strong, organized national union. The compromise - encapsulated in the 1948 ACFTU Constitution and in the 1950 Trade Union Law - entailed a national union built on the basis of the Leninist principle of "democratic centralism", a structure which required that the minority submitted to the will of the majority and the lower levels obeyed to the higher levels.¹⁸ Furthermore, the ACFTU was designated as "the highest leading body" (*zuigao lingdao jiguan*) for the unions nationwide, so establishing the monopoly of workers' representation which still stands today.¹⁹

Unsurprisingly, in the first months after the foundation of the People's Republic of China, the ACFTU had to deal with the mistrust and even the hostility of the workers. According to Mark Frazier, that was a period in which "thousand of private-sector employees left unemployed by the collapse of industrial activity during the civil war returned to their factories to demand their jobs back. They wanted higher wages, improvements in benefit and working conditions, and guarantees of full-time employment. In State-factories, Communist

University Press, Stanford, 1968; Chang Kuo-t'ao, *The Rise of the Chinese Communist Party, 1921-1927*, The University Press of Kansas, Lawrence, 1971; Lynda Shaffer, *Mao and the Workers: The Hunan Labor Movement 1920-1923*, M.E. Sharpe, New York 1983; Deng Zhongxia, "Zhongguo Zhigong Yundong Jianshi 1919-1926" (Short history of the Chinese worker movement 1919-1926), in *Deng Zhongxia Wenji*, Renmin Chubanshe, Beijing, 1983, pp. 423-639; Daniel Kwan, *Marxist Intellectuals and the Chinese Labor Movement: A study of Deng Zhongxia (1894-1933)*, University of Washington Press, Seattle, 1997.

¹⁵ The surviving documents of the various All-China Labour Congresses between 1925 and 1948 can be found in the volume *Zhongguo Gonghui Lici Daibiao Dahui Wenxian* (Documents from the previous congresses of the Chinese unions), Gongren Chubanshe, Beijing, 1984.

¹⁶ Lee Lai To, *Trade Unions in China, 1949 to Present*, Singapore University Press, Singapore 1986. On the Chinese labour movement in the Thirties in the Communist areas see also Nym Wales, *The Chinese Labour Movement*, Books for Libraries Press, New York 1945.

¹⁷ Chao Kuo-chun, *The Mass Organizations in Communist China*, Center for International Studies, Massachusetts Institute of Technology, 1953, p. 4.

¹⁸ Art. 8 of the 1948 Constitution.

¹⁹ Trade Union Law, 1950.

military cadres who had been placed in certain critical factories to 'supervise' factory directors often seized power from them, with predictable upheavals in basic operations."²⁰ This led to a situation in which "workers struck at will and frightened capitalists closed their factories."²¹ Even Li Lisan, then Chairman of the ACFTU and Minister of Labour, speaking at an international union conference in November 1949 had to admit that the situation in the previous months had been chaotic: "In private enterprises, after the liberation of each city, waves of workers' struggles immediately ensued. As the capitalists lost the support of the reactionary regime, they could not but make concessions to the demands of the masses. [...] However, the demands of the workers were sometimes too high. Their actions and forms of struggle were in some cases inordinate. This had effects on the close down of some enterprises, stoppage of production, and the passive running away of the capitalists; these are detrimental to the paramount interests of the resumption and development of production."²²

The necessity to restore production and regain control over the economy led the Party to step in with particular force, and the role of the ACFTU on the workplace was therefore strengthened. But then the opposite problem ensued, for the official union tended to side always with the management. According to Brugger, this "was not so much due to any continuation of [the] tradition [of the yellow unions under the Guomindang] as to the fact that union cadres often held concurrent management posts, that they were subjected to repeated transfer leaving their branches in the hands of inexperienced cadres, that they were probably too busy with the sheer paperwork involved in establishing a union apparatus to give much constructive criticism to management. Finally, they were too busy studying technology to be anything but compliant."²³ This tendency was soon to be labelled "bureaucratism" (*guanliao zhuyi*) and in August 1950 it became the target of a rectification campaign within the ACFTU. Concurrently, the authorities launched a series of experiments aimed at guaranteeing workers' status as masters of the enterprise (*qiye zhuren*) - an extension of the "sense of mastery" already described in the first chapter - under the umbrella of the "democratic management of the company" (*qiye minzhu guanli*).

It was on this background that the national leadership of the ACFTU tried for the first time to distance itself from the Party. The clash started in July 1950, when a Party cadre

²⁰ Mark Frazier, *The Making of the Chinese Industrial Workplace*, Cambridge University Press, Cambridge 2002, pp. 112-114,

²¹ Paul Harper, "The Party and the unions in communist China", cit., p. 91.

²² Li Lisan, "The experiences, lessons and present conditions of the Chinese workers' movement", in *Trade Union Conference of Asian and Australasian Countries*, Workers' Press, Beijing, 1950, pp. 22-31.

²³ William Brugger, *Democracy and Organization in the Chinese Industrial Enterprise (1948-1953)*, Cambridge University Press, Cambridge, 1973, p. 81.

named Deng Zihui took part in a regional union conference and presented a report on the work of the ACFTU in South and Central China.²⁴ In his speech, later republished by both *People's Daily* and *Workers' Daily*, he denounced that the union had become detached from the masses. Going even further, he argued that, although in the public sector both the union and the Party-State were working for the well-being of the workers and of the country - and it could not have been otherwise, since, as we have seen, the Party's revolutionary credentials were based on its claim to represent the vanguard of the working class - some differences between the functions of the union and those of the Party could not be avoided. For this reason, he reckoned that it was necessary to admit that in certain circumstances it was possible for the union to adopt a "standing point" (*lichang*) different from the Party.

In the Summer of 1950, this apparently mild assertion triggered a heated debate within the Party and union ranks, with prominent figures like Gao Gang, the powerful first secretary of the CCP in North-East China, asserting the opposite view, that is the complete identity of interests between the union, the Party and the workers.²⁵ Li Lisan who, before becoming union Chairman and Minister of Labour, had been one of the most prominent leaders of the early labour movement, weighed in the debate in support to Deng Zihui's thesis. In a speech given in March 1951 at the Second National Conference of the Electricity Industry, he affirmed that although under the new government the administration and the working class had come to coincide, it was unavoidable for "some small contradictions" (*xie xiao de maodun*) between workers and management to survive even in the State sector, with the salaries being the main case in point.²⁶ Yet, Li was careful to express his disagreement with Deng Zihui on the fundamental point of the existence of different "standing points" between the union and the administration. According to Li Lisan, such distinction was substantially wrong, because "under the 'new democracy', public and private interests overlap and therefore the standing point of the union and the administration also overlap. Wherever there is a difference, it can just be said that it is a matter of 'fundamental standing point' (*jiben lichang*) and 'concrete standing point' (*juti lichang*)."²⁷

In the draft of an official document written on the behalf of the ACFTU in September

²⁴ Deng Zihui, "Guanyu zhongnanqu de gonghui gongzuo" (On the trade union work in the South and Central areas), *Gongren Ribao*, 4 August 1950, p. 4.

²⁵ Gao Gang's position in the debate is described in Zhang Yi, "Zai Dongbei Zonggonghui Zhiwei Guandahui Gao Gang tongzhi zhishi gonghui gongzuo" (Comrade Gao Gang's directives for the union work at the Enlarged Executive Committee of the Union Federation for North-East China), *Gongren Ribao*, 6 August 1951, p.1.

²⁶ Li Lisan, "Xingzheng yu gonghui de guanxi" (The relations between the administration and the union), March 1951, in Laodong Guanxi Xueyuan (eds.), *Li Lisan Lai Ruoyu Lun Gonghui*, Dang'an Chubanshe, Beijing, 1987, pp. 146-149.

²⁷ Ibid.

1951, Li Lisan pursued the matter even further.²⁸ He distinguished two sets of potential contradictions which could affect the union work: first, the contradiction between "general interests" (*zhengti liyi*) and "individual interests" (*geren liyi*); second, the conflict between "long-term interests" (*changyuan liyi*) and "ordinary interests" (*richang liyi*). In his view, while "in the State enterprises the workers are the owners and there are no class conflicts nor exploitation, therefore the effects of the development of production are always beneficial, for both the individual and general interests of the working class and its long-term and ordinary interests", it was impossible to deny that "there still were some contradictions in the practical problems of workers' life, on the issues regarding labour conditions."²⁹ On this basis, he argued that it was important that the State enterprises had a union strong enough to represent the workers and protect their interests.

A few months later, in October 1951 Li Lisan repeated his views in a report directly addressed to Mao Zedong, urging the Chairman to take a position in the debate.³⁰ Mao Zedong's indirect reply arrived in a matter of weeks. On 20 December 1951, during an enlarged meeting of the Party group of the ACFTU, Li Fuchun, then Minister of the heavy industry ferociously criticized Li Lisan.³¹ In strict Party jargon, he accused Li Lisan to have committed three fundamental mistakes: first, to have "completely misunderstood the nature of the State enterprises", confusing the relations between workers and enterprise under the new socialist government with the previous situation under the Guomindang; second, to have "denied the role of the Party as a guide of the union, considering the latter as the highest representative of the working class"; third, to be guilty of "subjectivism" (*zhuguanzhuyi*), "formalism" (*xingshizhuyi*), "routinism" (*shiwuzhuyi*) and "paternalism" (*jiazhangzhi de zuofeng*). A couple of days later, Li Fuchun's speech was approved without reservations by the assembly. Even if this resolution was to be approved by the Party Central Committee only in January 1953, Li Fuchun's attack not only put an end to Li Lisan's political career, but also marked the conclusion of the first crisis in the relations between the Party and the union.

²⁸ Li Lisan, "Guanyu xin minzhuzhuyi shiqi gonghui gongzuo zhong ji ge wenti de jueyi" (Resolution on some issues regarding the union work in the phase of the new democracy), 28 September 1951, in Laodong Guanxi Xueyuan (eds.), *Li Lisan Lai Ruoyu Lun Gonghui*, cit., pp. 150-155.

²⁹ Ibid.

³⁰ Li Lisan, "Guanyu zai gonghui gongzuo zhong fasheng zhenglun de wenti de yijian xiang Mao Zhuxi de baogao" (Report to Chairman Mao on the controversial issues in the union work), 2 October 1951, in Laodong Guanxi Xueyuan (eds.), *Li Lisan Lai Ruoyu Lun Gonghui*, cit., pp. 156-158.

³¹ Li Fuchun, "Zai gonghui gongzuo wenti shang de fenqi" (Some divergences of opinion on matters related to union work), 20 December 1951, in ACFTU, *Jianguo Yilai Zhonggong Zhongyang Guanyu Gongren Yundong Wenjian Xuanbian*, Zhongguo Gongren Chubanshe, Beijing, 1989, pp. 96-116.

The second crisis (1957)

Li Lisan was replaced at the head of the ACFTU by an apparently malleable union cadre, Lai Ruoyu.³² While a "Movement of democratic reform" (*minzhu gaige yundong*) aimed at freeing the Chinese industry from its "feudal remnants" was still under way, in August 1951 the Party leadership decided to launch the "Three-anti campaign", a new political mobilization which targeted the three plagues of corruption, waste and bureaucratism within the administration of the State industry. In 1952 this campaign was extended to the private sector, under the new name of "Five-anti campaign", where the five problems in object were corruption, tax evasion, stealing of State property, fraud on governmental contracts and theft of economic data and State secrets. These movements seriously disrupted the production, laying the foundations for the impending nationalization. In August 1952, the Central Committee of the CCP approved a report by the Party group within the ACFTU which summed up the results of the two recent campaigns and planned the union activity for the following months. According to this document, "the union work in the past few years has been mainly concerned with the mobilization and the education of the masses and with carrying out the political reform inside the enterprises. [...] After the Three and Five anti campaigns, it can be said that this task of political reform has basically been carried out. From this moment on, it is requested that the union focuses its activity in a practical manner on production; that the union activity gradually pushes forward the unification (of the pace of activity, of the system and of the policies); and that the industrial unions are gradually completed and strengthened."³³

This emphasis on the necessity that the union focused its activities on production - a political line which was confirmed at the Seventh Congress of the ACFTU, which was held in Beijing in May 1953 - was clearly a sign of the oncoming launch of the first Five-year plan. The plan started in 1953, but a turning point in its implementation was reached only in 1955, when the Party decided to accelerate the achievement of the expected targets in industrial production, while drafting plans for the collectivization of the countryside. In the Winter of 1955 the authorities finally launched the campaign for the nationalization of the industry, a development which required a major resettlement in the field of industrial relations. This change was announced in September 1956, during the Eighth Congress of the CCP, in an

³² Li Guiren, *Lai Ruoyu Zhuan* (Biography of Lai Ruoyu), Shanxi Renmin Chubanshe, Taiyuan 1994.

³³ CCP Central Committee, "Zhonggong Zhongyang pizhun Quanzong dangzu guanyu 'san fan', 'wu fan' yihou qingkuang ji 1952 nian xiabannian gongzuo jihua baogao" (The Central Committee of the CCP approves the report of the ACFTU Party Group on the situation after the "Tree anti" and the "Five anti" campaigns and the work plan for the second half of 1952), in ACFTU, *Jianguo Yilai Zhonggong Zhongyang Guanyu Gongren Yundong Wenjian Xuanbian*, cit., pp. 26-31.

important speech held by Li Xuefeng, then Director of the Party Central Committee Industry Department.³⁴ The new industrial relation regime to be adopted in all State and collective enterprises was defined as a "system of responsibility of the factory director under the leadership of the Party committee" (*dangwei lingdao xia de changzhang fuzezhi*). This move not only enormously reinforced the authority of the Party on the workplaces, but also guaranteed the decentralization necessary to carry out the second Five-years plan. As Schurmann has pointed out, the new management system introduced a new distinction between "technical decisions" and "political decisions", even if more often than not it was difficult to draw a clear line between the two categories.³⁵

These changes in the industrial structure had a huge impact on the life of the Chinese workers, especially for those who up to that moment had been employed in the private sector. In spite of the fact that the nationalization of the industry had been described by the official propaganda as a historical step forward towards the end of class struggle and capitalist exploitation, these workers saw their conditions getting worse. Furthermore, while in the past they had felt that they were morally entitled to fight their employers and, eventually, they could even hope to receive some support from the union and the Party, with the entrance of the State in the ownership of the enterprises they lost any moral and political leverage. Paradoxically, the claim that the workers had become "the masters of the enterprise" ended up weakening them, and the union completely gave up the pretension to be a representative of the interests of the workers, shifting "from an unionism of class struggle aimed in fact against the employers, to a State unionism, dedicated to nothing else than production growth and the management of social services."³⁶ In this period, not only the management obtained an absolute power on the working class, but also a maladroit reform of the wage system carried out in the second semester of 1956 hit heavily the interests of the workers, leading to a wave of strikes.³⁷

One of the consequences of this wave of labour unrest was a debate on the right to strike, which had been missing from both the Common Program of 1949 and the Chinese Constitution of 1954. Mao Zedong himself had raised the issue when, during a meeting of the Central Committee in March 1956, had stated that "it is necessary to allow the workers to go

³⁴ Li Xuefeng, "Li Xuefeng tongzhi fayan" (Comrade Li Xuefeng's speech), in *Zhongguo Gonghui Diqici Quanguo Daibiao Dahui Zhuyao Wenjian*, Gongren Chubanshe, Beijing, 1953, pp. 457-464.

³⁵ Franz Schurmann, *Ideology and Organization in Communist China*, University of California Press, Berkeley, 1971, pp. 287-288.

³⁶ François Gipouloux, *Les Cent Fleurs à l'Usine*, Edition de l'Ecole des Hautes Etudes en Sciences Sociales, Paris, 1986, p. 213.

³⁷ Cristopher Howe, *Wage Patterns and Wage Policy in Modern China, 1919-1972*, Cambridge University Press, Cambridge, 1973, pp. 89-95.

on strike, allow the masses to protest. The demonstrations have their basis in the Constitution. If in the future the Constitution is to be amended, I suggest to add a freedom of strike, it is necessary to let the workers go on strike. This can benefit the resolution of the contradictions between the workers, the directors of the factories and the masses."³⁸ Mao then took up the issue again in February 1957, in his famous speech "On the correct handling of contradictions among the people".³⁹ In his opinion, the contradictions among workers and those between workers and national bourgeoisie had to be considered "contradictions among the people" (*renmin neibu maodun*) and therefore had to be solved through the method of "unity-criticism-unity" (*tuanjie-piping-tuanjie*). In his speech, Mao specifically quoted some episodes of worker unrest which had taken place the previous year, labelling them "disorders created by a small number of individuals", and explained that they had three different roots: the failure by the Party to satisfy the economic requests of the workers, a bureaucratic approach by the leadership and the inadequate political and ideological education of the workers. He blamed the masses for not understanding the long-term, as well as the national and collective interests, but at the same time recognized that such events could have occurred again in the future and suggested to make good use of them to improve the work of the Party.

After less than a month, the Central Committee of the CCP formally adopted Mao Zedong's ideas in an official document titled "Directive of the Central Committee of the CCP on the handling of the strikes by workers and students."⁴⁰ This document - up to now the only public official statement by the communist leadership on how to treat the strikes - espoused Mao's point of view on the reasons of labour unrest in China. It claimed that in the event that the masses had been deprived of their democratic rights and had no other choice than adopting extreme measures as strikes or protests, these actions "were not only unavoidable, but also necessary", therefore had to be allowed. The directive stated that these actions did not absolutely go against the Constitution - and therefore there was no reason to forbid them - but at the same time suggested that the Party committees infiltrate the lines of the people on strike, in order to take the lead and prevent that the masses "got stranded on the wrong way by some bad elements." In the whole directive, the union was mentioned only three times, twice in passing, once just to emphasize that the Party committees had to "lead the union and the

³⁸ Mao Zedong, "Zai Zhongguo Gongchandang dibajie zhongyang weiyuanhui di'erci quanti huiyishang de jianghua" (Speech at the second plenum of the eighth Central Committee of the CCP), quoted in Chang Kai, "Bagongquan lifa wenti de ruogan sikao" (Some thoughts on the issue of the legislation on the right to strike), *Xuehai*, n. 4 2005, pp. 43-55.

³⁹ Mao Zedong, "Correct handling of contradictions among the People", 27 February, in Mao Zedong, *Selected Works of Mao Tsetung*, Foreign Language Press, Beijing, 1977, vol. V, pp. 384-421.

⁴⁰ Central Committee of the CCP, "Zhonggong Zhongyang guanyu chuli bagong, bake wenti de zhishi" (Directive of the Central Committee of the CCP on the handling of the strikes by workers and students), in ACFTU, *Jianguo Yilai Zhonggong Zhongyang Guanyu Gongren Yundong Wenjian Xuanbian*, cit., pp. 507-515.

youth league to actively reflect the opinions and the requests of the masses."

It was against this background that the second crisis in the relations between the Party and the union started to unfold. Mao's February speech had marked the launch of the "Hundred flowers campaign". Under the slogan "let one hundred flowers bloom and one hundred school of thought contend" (*baihua qifang, baijia zhengming*), the Party leadership invited the people to voice freely their opinions and criticisms. It took a while for the campaign to gain momentum, but eventually more and more citizens, especially intellectuals and members of the democratic parties, started expressing their concerns. In early May, the ACFTU at the national level decided to weigh in the debate through the pages of the union mouthpiece, the *Workers' Daily*. On 8 May 1957, Chen Yongwen, then chief editor of the newspaper, ran a long interview with Lai Ruoyu.⁴¹ In this exchange, re-published the following day on the *People's Daily*, the union Chairman tackled the fundamental issue of the position of the union in relation to the Party which previously had led to the downfall of Li Lisan. First, he challenged the official position that there could have been some contradictions between the union and the management, but never any contradiction between the union and the workers:

The union is an organization of the masses, this is not wrong. Nevertheless, the union is in this position: on one side, it is an organization of the masses and it should therefore represent their opinions; on the other, it is not a single person, but it has an unified national structure, therefore it should comprehend the general situation, understand the current situation of the State, represent the long-term interests of the masses, be patient in persuading the masses about their misconceptions.

This position of the union has some disadvantages. Standing in this position, the union should understand the views of both the leaders and the masses, fully developing its function of middleman in the resolution of the contradictions among the people. But this position of the union can lead to the emergence of contradictions with both the leaders and the masses. The union reflects the opinion of the masses, so if among the enterprise leaders there is a problem of bureaucratism, contradictions are unavoidable; if among the masses there are some incorrect opinions, the union has to persuade them, and even in this case, contradictions can arise.⁴²

Then, a long section of the interview dealt with the issue of the position of the union during strikes and worker protests. Lai chose to emphasize the duty of the union to stand by the masses, because otherwise it would have lost credibility and the workers would have established autonomous organizations. Answering a question about the possibility to launch a

⁴¹ Lai Ruoyu, "Gonghui zenyang duidai renmin neibu maodun?" (How does the union treat the contradictions among the people?) in *Li Lisan Lai Ruoyu Lun Gonghui*, cit., pp. 445-449. The original article is titled "Gonghui zuzhi chu zai shenmeyang de diwei?" (What is the position of the union?), *Gongren Ribao*, 8 May 1957, p. 1.

⁴² Ibid.

"debate among the hundred schools" within the union, Lai took a prudent stance, declaring that this would have been appropriate, provided that it did not lead to the creation of internal factions. At the same time he decided to delve on the very sensitive issue of the relations between the union and the Party:

From the point of view of the union, one of the main problems at the moment concerns democracy. Only when there will be democracy, it will be possible to prove that the union is an organization of the masses. To adapt to the current tendencies, the union should solve two big problems: the relations with the administration and the Party.

For what concerns the relations with the administration, in the past the issue of the identity [of interests] has been emphasized and not much attention has been paid to the differences, so in dealing with problems we always stood by the leaders, it was not possible to represent the interests of the masses. This simplistic view of the contradictions among the people has often led the union to adopt bad work methods, preventing it from carrying out its function of mediator between the leaders and the masses. This will have to change.

For what concerns the issue of the relations with the Party, in the past it has been settled that the union has to accept the leadership of the Party. This is correct, but not enough attention has been paid to the fact that, being an organization of the masses, the union also has to carry out independent activities, though being subject to the guidance of the Party for what regards the policies and the thought. Only by carrying out its own independent activities, the union will be able to fulfill its functions.⁴³

The following day, the *Workers' Daily* published another critical piece, a report on a long investigative journey undertaken in the previous months by Li Xiuren, Deputy Director of the ACFTU General Office.⁴⁴ This "eight thousand *li*" trip had taken Li and an unnamed member of the CCP Central Committee in a dozen of cities on the railway Beijing-Hankou and Hankou-Guangzhou. In every city they stopped, Li and his companion found clear hints of the "crisis of the union", with enraged workers blaming the ACFTU for being nothing more than a "tail of the administration" (*xingzheng de weiba*), a "department for the management of the workers" (*gongren guanlike*) or a "tongue of bureaucratism" (*guanliaozhuyi de shetou*), and striving to establish their own autonomous organizations. Many union cadres complained about the difficulty of their position: even if they wanted to support the rightful requests of the masses, they could not do this, because they were pressed between their obligation to represent the masses and imperative of respecting Party discipline. They were particularly concerned of being accused of "syndicalism" (*gongtuanzhuyi*),

⁴³ Ibid.

⁴⁴ Li Feng, "Gonghui gongzuo 'zouma guanhua' ji" (Cursory notes on the union work), *Gongren Ribao*, 9 May 1957, p. 12.

"tailism" (*weibazhuyi*) and "independence from the Party" (*dui dang nao duli*) and even of losing their Party membership. Some union cadres in Guangdong complained of being "fourth level cadres" (*si deng ganbu*), that is to say subordinated to Party cadres, management and even technicians.

The publication of these two articles opened a heated debate about the role and the functions of the union in socialist China. In May and June 1957 the Chinese press published a great number of articles which dealt with the issue of the perceived impotence of the union in representing workers' rights.⁴⁵ Some of these pieces even put forward radical proposals, as in the case of Gao Yuan, then Director of the Archival Department of the ACFTU Central Office, who argued that, if necessary, the union should have taken up arms against the Party.⁴⁶ Unsurprisingly, in front of such criticisms the Party once again stepped in. On 19 June 1957, the *People's Daily* published Mao's February speech, but the printed version was slightly different from the original one, for it emphasized *ex-post* the boundaries which should not have been crossed in the debate, that is the political legitimacy of the Party.

The national leadership of the ACFTU was caught in the ensuing wave of repression. Exactly as it happened in 1951 with the fall of Li Lisan, in September 1957 an enlarged meeting of the ACFTU Party Group was called to deliberate on two fundamental issues: the validity of the resolution adopted in November 1951 on the struggle against economism and syndicalism and the functions and role of the union under the dictatorship of the proletariat.⁴⁷ On 5 September, Lai Ruoyu held a long speech in which he substantially confirmed the validity of the 1951 report, attacking the line of Li Lisan and giving up any demand of independence for the union.⁴⁸ Then, at the end of 1957, the Eight Congress of the ACFTU laid the basis of the decentralization of the union in sight of the Great Leap Forward.⁴⁹ In the following months, at least twenty-two high-level cadres of the ACFTU were purged, among them the chief editor of the *Workers' Daily*, Cheng Yongwen. In May 1958 Lai Ruoyu died of illness. This second crisis left the union weaker than ever, depriving it of its most outspoken

⁴⁵ A remarkable contribution to the debate is the series of articles penned by Cheng Yongwen, "Xixing jiyao" (Report from a travel to the West), *Gongren Ribao*, published from 30 May to 12 June.

⁴⁶ Quoted in François Gipouloux, *Les Cent Fleurs a l'Usine*, cit. pp. 257-261.

⁴⁷ CCP Central Committee, "Zhonggong Zhongyang pizhuan Quanzong dangzu guanyu zhaokai dangzu kuoda huiyi de qingshi" (The CCP Central Committee approves the instructions regarding the enlarged meeting of the ACFTU Party group), 22 July 1957, in ACFTU, *Jianguo Yilai Zhonggong Zhongyang Guanyu Gongren Yundong Wenjian Xuanbian*, cit., pp. 545-546.

⁴⁸ Lai Ruoyu, "Guanyu dangqian gonghui gongzuo de ruogan wenti" (About some problems in the current work of the union), 5 September 1957, in ACFTU, *Jianguo Yilai Zhonggong Zhongyang Guanyu Gongren Yundong Wenjian Xuanbian*, cit., pp. 556-603.

⁴⁹ The documents of the Eighth ACFTU Congress have been collected in ACFTU, *Zhongguo Gonghui Dibaci Quanguo Daibiao Dahui Zhuyao Wenjian* (Fundamental documents of the Eight National Congress of the Chinese Union), Gongren Chubanshe, Beijing 1957.

personalities.⁵⁰ From that moment on, the ACFTU stopped playing any meaningful role in industrial relations, until January 1967, in the wake of the Cultural Revolution, when it was completely dismantled.⁵¹

The third crisis (1989)

After the hiatus of the Cultural Revolution, the late Seventies and early Eighties were a period of deep reforms. While, as we have seen in chapter one, a reform of the industrial system was unavoidable in order to solve the issue of urban unemployment and boost the efficiency of the State sector, other contingent factors still constrained the authorities from adopting any reform which could have led to a significant political change.⁵² Most of all, the Chinese leadership was very wary of the possibility of a "Polish drift" in China, a concern which became especially pressing in the Summer of 1980, following the sympathetic coverage received by the rise of Solidarity in Poland on the Chinese media.⁵³ The first signals that significant reforms were under way in the field of labour relations were a wage adjustment in 1977 and the re-establishment of the company funds for bonuses and prizes the following year, a decision which allowed the enterprises to keep a part of the profits, provided that they exceeded a certain production quota.⁵⁴ At the same time, the administrative reform was deepened and the State industry was included in the scope of the responsibility system already implemented in the countryside. In 1983, it was decided to bind salaries to productivity through a system of "fluctuating wages" (*fudong gongzi*) and in 1984 the "responsibility system of the factory director" was reinstated, drastically cutting the authority of the Party committees on the workplace.⁵⁵ Finally, the most drastic step was adopted in 1986, when the Party decided that time was ripe to adopt the labour contract system.⁵⁶

In such a context, the ACFTU made its comeback. After a few years of patient and gradual reconstruction of the regional and industrial branches, in October 1978 the Ninth

⁵⁰ François Gipouloux has a list of the purged cadres in the appendix of *Les Cent Fleurs a l'Usine*, cit. pp. 327-332.

⁵¹ He Bufeng, "Wenhua Dageming zhong Quanguo Zonggonghui tingzhi huodong de qianqian houhou" (The reasons behind the suspension of the activities of the ACFTU during the Cultural Revolution), in *Zhongguo Gongren Yundonsi Yanjiu Wenji*, Zhongguo Gongren Chubanshe, Beijing 2000, pp. 229-230.

⁵² John Philip Emerson, "Urban school-leavers and unemployment in China", *The China Quarterly*, n. 93, March 1983, pp. 1-16.

⁵³ Jeanne Wilson, "'The Polish lesson': China and Poland 1980-1990", *Studies in Comparative Communism*, vol. 23 n. 3/4, Autumn/Winter 1990, pp. 259-278.

⁵⁴ Luigi Tomba, *Paradoxes of Labour Reform*, University of Hawai'i Press, Honolulu, 2002, p. 64.

⁵⁵ *Ibid.*

⁵⁶ Gordon White, "The politics of economic reform in Chinese industry: The introduction of the labour contract system", *The China Quarterly*, n. 111, September 1987, pp. 365-289.

National Congress of the union was finally convened in Beijing. On that occasion, Deng Xiaoping held an important speech which defined the trajectory of the union for the years to come.⁵⁷ While he decided to maintain some continuity with the role of the union as it was conceived before the Cultural Revolution - stating, among other things, that "the direction, the political line and the tasks defined by the Sixth, Seventh and Eighth Congress of the ACFTU are correct" - at the same time he assigned a new role to the ACFTU in the context of the "Four modernizations." Starting from the assumption that China was still an under-developed country, Deng underlined that "the union has to protect the well-being of the workers. Our country is still backward, so the well-being of the workers cannot increase much on the short term. It can only increase gradually following the increase in production, especially in labour productivity."⁵⁸ After announcing the importance of the "democratic management of the enterprise" in order to achieve the Four Modernizations and explaining that the union would have acted as managing body of the congresses of the workers' representatives within the companies, Deng said that this was the only way to make the union relevant to the workers: "Only this way, the union will not be that kind of organization whose existence is deemed irrelevant (*na zhong keyou kewu de zuzhi*)."⁵⁹ The Ninth Congress also appointed Ni Zhifu as union Chairman, a position which he would hold until 1993.

During the Eighties, the ACFTU tried to keep up with the pace of the times. First, in a symbolic gesture of pacification, Li Lisan and Lai Ruoyu – who by then were both deceased – were finally rehabilitated and their ideas of trade unionism praised.⁶⁰ Second, a series of new regulations on the democratic management of the enterprise were passed and hundreds of thousand of State companies established workers' congresses, a development which was due not only to the need to reinforce the legitimacy of the Party among the workers, but also to the necessity of the Chinese government to gain credibility on the international front, especially in the wake of People's Republic's entrance in the International Labour Organization as an active member in 1983.⁶¹ Finally, the Tenth National Congress of the ACFTU, held in Beijing

⁵⁷ Deng Xiaoping, "Zai Zhongguo gonghui dijiuci quanguo daibiao dahuishang de zhici" (Opening speech at the Ninth National Congress of the Chinese union), 11 October 1978, in ACFTU, *Zhongguo Gonghui Dijiuci Quanguo Daibiao Dahui Zhuyao Wenjian*, Neimenggu Renmin Chubanshe, Huhehuote, 1978, pp. 1-6.

⁵⁸ Ibid.

⁵⁹ Ibid.

⁶⁰ Wang Zhen, "Zhonggong Zhongyang Zhengzhiju weiyuan Wang Zhen tongzhi zai Li Lisan zhuidaohui shang zhi de zhuci" (Commemorative speech of the comrade Wang Zhen, member of the CCP Politburo, at the memorial service for Li Lisan), 20 March 1980, in ACFTU, *Jianguo Yilai Zhonggong Zhongyang Guanyu Gongren Yundong Wenjian Xuanbian*, cit., pp. 1278-1281.

⁶¹ Jeanne Wilson, "The People's Republic of China", in Alex Pravda and Blair Ruble (eds.), *Trade Unions in Communist States*, Allen & Unwin, Boston 1986, pp. 219-251; Richard Morriss, "Trade unions in contemporary China", *The Australian Journal of Chinese Affairs*, n. 13 January 1985, pp. 50-67. On the relations between the People's Republic and the ILO, see Ann Kent, "China, international organizations and regimes: The ILO as a case study in organizational learning", *Pacific Affairs*, vol. 70 n. 4 (Winter 1997-98), pp. 517-532.

in 1983, marked some significant changes for the relations between the union and the Party. While not questioning the leading role of the Party on the union, in his opening speech, Li Xiannian, then President of the PRC, echoed Lai Ruoyu's words when he said that the union, as the other mass organizations, should have had "responsibility and authority and should be able to carry out its activities independently (*youzhi youquan, nengggou duli fuze de kaizhan gongzuo*)." The new ACFTU Constitution underlined that the union should "put at the center the edification of the four modernizations; speak and act on the behalf of the workers and employees; protect their rightful rights and interests; strengthen their political and ideological education and their cultural and technical training; create a rank of workers with ideals, virtue, culture and discipline; fully develop the role of the working class as the main force of the socialist material and spiritual civilization."⁶² According to the new Constitution, the union should have carried out its activities in an "active and independent way" (*jiji zhudong, duli fuze de*).⁶³

Yet, the grounds for a real change in the relations between the ACFTU and the Party were laid only five years later, at the Eleventh National Congress of the union, which was held in Beijing in October 1988. In his opening speech, Party's general secretary Zhao Ziyang finally conceded that a real divergence existed among the general interests of the State and the specific interests of the workers:

Under socialism, the working masses have not only interests in common with other sectors of the society - the general interests of the State - but also their own specific interests. In the past, the fact that the union had to protect the specific interests of the workers has been neglected and this has had a negative influence on the edification of the union organization. We have to learn from both the positive and negative experiences of the labour movement and, according to the spirit of the Thirteenth Party Congress, ensure that putting the construction of the economy at the centre, protecting the general interests of the people but also, at the same time, guaranteeing the specific interests of the working masses become fundamental guiding principles of the Chinese labour movement and of the union's activities, making sure that the union carry out in a better way its social role.⁶⁴

This opening did not prevent Zhao Ziyang from reaffirming that the "basic interests of the union and the government are the same", nor that the union remained "a mass organization of the working class under the leadership of the Chinese Communist Party", where "the

⁶² ACFTU, "Zhongguo gonghui zhangcheng", passed on 23 October 1983, in ACFTU, *Zhongguo gonghui dishici quanguo daibiao dahui jiniankan*, Gongren Chubanshe, Beijing 1985, pp. 3-8.

⁶³ Ibid.

⁶⁴ Zhao Ziyang, "Zai Zhongguo gonghui dishiyici quanguo daibiao dahui shang de zhici" (Opening speech at the Eleventh National Congress of the Chinese union), 22 October 1988, in ACFTU, *Zhongguo Gonghui Dishiyici Quanguo Daibiao Dahui Wenjian Huibian*, Gongren Chubanshe, Beijing 1988, pp. 1-11.

leadership of the Party is political" or, in other words, "a guidance in the political principles and in the political direction, as well as in the recommendation of the main people to put in charge of the national and the regional unions."⁶⁵

At the same congress, the political line of the ACFTU was revised as such: "The union upholds the centrality of the economic construction. While it protects the general interests of the people, it also expresses and protects even better (*geng hao de*) the specific interests of the working masses, speaking and acting on their behalf. It creates a rank of workers with ideals, virtues, culture and discipline. It develops the role of the working class as the principal force in the socialist material and spiritual civilization." Furthermore, the reformist bent of the union was confirmed in a document which was presented at the Congress, a "Basic plan for the reform of the union" (*gonghui gaige de jiben shexiang*) which candidly admitted the weaknesses of the ACFTU - lack of internal democracy, despotism of the cadres, scarce coordination between local and industrial unions, alienation from the workers - and sought to trace a path for future reforms.⁶⁶ In the end, as Bill Taylor, Chang Kai and Li Qi have argued, "the significance of this Congress is that it took protecting workers' interests as the primary and basic function of trade unions [...]. It also defined the mass-oriented and democracy-oriented goals for trade union reform. Moreover, it instituted democratic ideals of union organizational forms, particularly by instituting an association system, whereby lower unions form associations of higher unions, and a delegate system, whereby lower unions send delegates to higher-level forums, as the organizational principles of trade unions."⁶⁷

Unfortunately, the hopes for reforms were soon to be thwarted by the events of the Spring 1989. Even if the quality of the workers' lives at the end of the decade had significantly increased in comparison with 1978, the morale of the Chinese workforce was very low.⁶⁸ Jackie Sheehan in her history of the Chinese labour movement has highlighted four fundamental reasons for this uneasiness: first, the smashing of the "iron rice bowl", which at the time was still considered as a "socialist deviation"; second, the consequences of the official emphasis on the need of a scientific management of the enterprise and on the authority of the factory director, further exacerbated by the promotion of the exploitative model of labour relations adopted in the Special Economic Zones; third, a wide sense of insecurity, due to the ongoing dismantling of the welfare system and the concomitant increase

⁶⁵ Ibid.

⁶⁶ ACFTU, "Gonghui gaige de jiben shexiang" (Basic plan for the reform of the union), in ACFTU, *Zhongguo Gonghui Dishiyici Quanguo Daibiao Dahui Wenjian Huibian*, cit., pp. 54-70.

⁶⁷ Bill Taylor, Chang Kai, Li Qi, *Industrial Relations in China*, Edward Elgar, Cheltenham, 2003, pp. 111-112.

⁶⁸ Andrew Walder, "Workers, managers and the state: The reform era and the political crisis of 1989", *The China Quarterly*, n. 127, September 1992, pp. 467-492.

of the living costs, hardly matched by the wages' growth; finally, management's corruption and the widening gap in the salaries and the conditions of blue collars and managers.⁶⁹ Since 1986, a galloping inflation – with an average of 12,1% between 1985 and 1988 and a peak of 20,7% in 1988 - started eroding real wages, creating great discontent towards officialdom, on the basis of a popular theory which equated inflation and corruption.⁷⁰ All of this made, the times ripe for a major political crisis, even if by then, nobody could have predicted that "the sparkle which ignite the prairie" would have come from the death of a senior Party leader beloved by the people, Hu Yaobang.

There is no need to recollect here the events that led to the students' occupation of Tiananmen Square in that fateful Spring. We will just note that, while the whole world was looking with sympathetic eyes to the struggles of the students, a significant number of workers was also involved in the protest. However, since the beginning the students had been reluctant to welcome the workers into the movement, treating them with diffidence or even hostility: student leaders not only forced the workers to set up their headquarters on the north-west corner of the Square, on Chang'an Jie, but also refused to proclaim a general strike on at least two occasions, on 20 and 28 May.⁷¹ Yet, in spite of all internal divisions, between April and May 1989, independent unions sprung up in many cities in China, the most famous of them being the Beijing Workers Autonomous Federation (*gongzilian*) established in the capital in May. As later recognized by some activists directly involved in those events, we do not know what was the extent of the popular support enjoyed by these unions, but what is more important for this chapter's purposes is the fact that in front of such a wave of mobilizations among urban workers, the ACFTU - or at least parts of it - felt compelled to act.⁷²

The first time that the official union played an active role in the movement was on 14 May, when a delegation of the ACFTU marched on the Square to express its support to the

⁶⁹ Jackie Sheehan, *Chinese Workers: A New History*, Routledge, London, 1998, pp. 195-209.

⁷⁰ Andrew Walder, Xiaoxia Gong, "Workers in the Tiananmen protests: The politics of the Beijing Workers Autonomous Federation", *The Australian Journal of Chinese Affairs*, n. 29 January 1993, pp. 1-29.

⁷¹ Ibid.

⁷² Besides the study by Andrew Walder and Gong Xiaoxia, much has been written about the workers' involvement in the 1989 movement, but the issue of the role of the official union has always been cursorily mentioned. See Anita Chan, "Revolution and corporatism? Workers and trade unions in post-Mao China", *The Australian Journal of Chinese Affairs*, n. 29 January 1993, pp. 31-61; Wang Shaoguang, "Deng Xiaoping reform and the Chinese workers participation in the protest movement of 1989", *Research in Political Economy*, vol. 13 1992, pp. 163-197; Jeanne Wilson, "Labour policy in China: Reform and retrogression", *Problems of Communism*, vol. 39 n. 5, 1990, pp. 44-65; Zhang Yunmei, "Lishun yu chongtu: Zhongguo gonghui yu dang-guojia de guanxi" (Order and conflicts: the relations between the union and the Party-State), *Ershiyi Shiji*, n. 18 September 2003, <http://www.cuhk.edu.hk/ics/21c/supplem/essay/0308024g.htm>, last access 24 October 2012. For the testimony of an activist directly involved in the events see Han Dongfang, "Chinese Labour Struggles", *New Left Review*, n. 34 del July-August 2005, pp. 65-85.

struggling students.⁷³ On 16 May four hundred pupils of the Institute on Labour Movement, a union's think-tank, marched to the ACFTU headquarter and presented the union first secretary Zhu Houze with a petition signed by more than five hundred people. The signers asked that the ACFTU intervened as a "representative of workers and employees" to request to the National People's Congress, the State Council and the Party Central Committee to recognize the patriotic nature of the student movement, to guarantee the freedom of press, publication and association, to fight against corruption, to adopt a new legislation on labour unions and to recognize the fact that the union had to speak and act on the behalf of the workers.⁷⁴ On 17 May, staff and students from the Institute on Labour Movement participated to various demonstrations, while about ten thousand workers from an electric cables factory in Beijing signed a petition to ask the ACFTU to press the authorities to open a real dialogue with the students and to promise that there would not have been any revenge after the protests were over, two proposals which were received with favour by the ACFTU vice-Chairman, Wang Houde.⁷⁵ On 18 May, the ACFTU donated one hundred thousand yuan to the Red Cross to help the student on hunger strike, a gesture which earned a lot of attention and support from the public.⁷⁶ That very day, the ACFTU put forward three new requests for the government: to start a real dialogue with the students, to open an early session of the National People's Congress Standing Committee, and to start a dialogue with the workers under the aegis of the union.⁷⁷ Finally, according to some sources, the ACFTU had decided to proclaim a general strike for May 20th, an unprecedented step which may be the reason behind Prime Minister Li Peng decision to declare the martial law.⁷⁸

After the declaration of martial law, the situation became very tense and the conservative side of the ACFTU took over. On 2 June, Ni Zhifu, then still Chairman of the ACFTU, in a speech at a Conference of the Presidents of the Industrial Unions affirmed the necessity to restore the order, emphasized the importance of the leadership of the CCP on the

⁷³ Li Yun, Yue Feng, Xiao Li, Nan Shi, Li Shan (eds.), *Diankuang de Shenian zhi Xia* (The tumultuous Summer of the year of the snake), Guofang Keji Daxue Chubanshe, Beijing, 1989, p. 114.

⁷⁴ "400 yu ming gonghui gongzuozhe youxing qingyuan" (Over four hundred union workers take the street and present a petition), *Gongren Ribao*, 17 May 1989, p. 1.

⁷⁵ "Beijing dianzi gongchang wan ming zhigong fachu huyu" (Ten thousand employees of a Beijing electric factory launch an appeal), *Gongren Ribao*, 18 May 1989, p. 1; "Quanzong fuzhuxi Wang Houde dui benbao jizhe fabiao tanhua" (Wang Houde, vice-president of the ACFTU, speaks with one of our journalists), *Gongren Ribao*, 18 May 1989, p. 1.

⁷⁶ The news of this donation is published both on the *Workers' Daily* (18 May 1989, p. 1) and the *People's Daily* (19 May 1989, p. 2)

⁷⁷ ACFTU, "Guanyu dangqian shitai de wu dian shengming" (Five declarations on the present situation), *Gongren Ribao*, 19 May 1989, p. 1.

⁷⁸ Wang Shaoguang, "Deng Xiaoping reform and the Chinese workers participation in the protest movement of 1989", cit.

union and criticized the autonomous workers' federations.⁷⁹ On 12 June, the ACFTU leadership published a letter addressed to the workers and the union cadres in the whole country where it was reiterated that it was everybody's duty to respond wholeheartedly to the Central Committee's decision on opposing the disorders, to expose and fight the conspiracies of those "few" troublemakers, to fight against autonomous unions, and to eliminate the various disturbances and ensure production.⁸⁰ Finally, in the following months, an internal purge deprived the union of its most reformist cadres and leaders, among them its first secretary Zhu Houze, who was arrested in August.⁸¹ This conservative turn put an end not only to the third crisis in the relations between the ACFTU and the Party, but also to the hope for further reforms in the direction of the independence of the union.

Conclusions

Since 1989, much has changed for the Chinese union. First, in 1992 the Chinese authorities passed a new Trade Union Law. Although this Law - amended in 2001 - reaffirmed the control of the Party over the union and reiterates the ACFTU's monopolistic status over the Chinese labour movement, it still was an attempt to pick up the broken thread of the reforms, for example introducing for the first time since 1956 the possibility to sign collective contracts. Second, even if since 1988 the ACFTU has held four more National Congresses, the centre of the union reform has shifted from the ideological realm to the more technical aspects of the legal reforms. The promotion of the rule of law in the field of labour relations, as well as the idea of "rights' protection" (*weiquan*) have become central features of the union activity. Not only the ACFTU has given - and is still giving - an important contribution to the State's legislative activity in the field of labour, promoting new laws and regulations favourable to the workers, but it is also investing considerable resources in the promotion of the legal knowledge among the workers, emphasizing the importance of the legal education in order to improve workers' awareness. Third, in the wake of the drastic restructuring of the State sector in the late Nineties - when tens of millions of State workers were laid off and the unions simply remained silent - the ACFTU has lost much of its

⁷⁹ Ni Zhifu, "Zai quanguo changye gonghui zhuxi zuotanhuiyi Ni Zhifu tongzhi de jianghua" (Speech of the comrade Ni Zhifu at the National Forum of the presidents of the industrial unions), *Gongren Ribao*, 2 June 1989, p. 1.

⁸⁰ ACFTU, "Quanzong zhixin quanguo zhi Gong he gonghui ganbu" (The ACFTU sends a letter to the workers and the union cadres nationwide), *Gongren Ribao*, 12 June 1989, p. 1.

⁸¹ Cheng-chang Chiang, "The role of trade unions in mainland China", *Issues and Studies*, n. 26 February 1990, pp. 75-98.

constituency, facing economic hardships and a legitimacy crisis without precedents.⁸² In the late Nineties, union membership drastically declined, from the almost 104 million members of 1995, to the less than 87 millions in 1999.⁸³ Since then, the national leadership of the ACFTU has pulled a new unionization drive, especially among foreign companies and migrant workers.

As underlined in the premises of this chapter, the various layers of the unions have been playing different roles in the shifting dynamics of reforms. For instance, much has been written about the issue of the legal mobilization at the local level and much is being written right now about the neo-corporatist tendencies of some provincial unions, especially in Guangdong.⁸⁴ A few years ago, in 2006, company unions gained a lot of attention in the wake of the unionization of the Walmart stores in China: since the first Walmart unions were initiated through underground organizing of workers by ACFTU cadres, Chinese and international media hailed this as a turning point for Chinese unionism, and the official union was able to transform it in a very successful public relations stunt.⁸⁵ More recently, experiments with the direct election of union chairmen and union committees' members at the company level have gained a lot of attention from the Chinese and international media, and so have a union campaign to increase the coverage of collective agreements.

While the unions at the company level are generally dismissed as "puppets of the management", the national level of the ACFTU is usually regarded as the most conservative layer of the union hierarchy. Of course, this is an unavoidable consequence of its intimate

⁸² On the impact of the restructuring of the State sector on workers, see William Hurst, *The Chinese Worker after Socialism*, Cambridge University Press, Cambridge, 2012; Cai Yongshun, *State and Laid-Off Workers in Reform China: The Silence and Collective Action of the Retrenched*, Routledge, London, 2005.

⁸³ Official data from the Trade Union Statistical Yearbooks, see ACFTU, *Zhongguo Gonghui Tongji Nianjian*, Zhongguo Tongji Chubanshe, Beijing, various years.

⁸⁴ About the issue of legal mobilization see Chen Feng, "Legal mobilization by trade unions: The case of Shanghai", *The China Journal*, n. 52, July 2004, pp. 27-45. The corporatist point of view on the Chinese union can count on a wide literature, see Anita Chan, "Revolution or corporatism? Workers and trade unions in post-Mao China", cit.; Jonathan Unger and Anita Chan, "China, Corporatism and the East Asian Model", *The Australian Journal of Chinese Affairs*, n. 33 1995, pp. 29-53; Jonathan Unger and Anita Chan, "Corporatism in China: A developmental State in an East Asian context", in Barrett McCormick and Jonathan Unger (eds.), *China After Socialism: In the Footsteps of Easter Europe or East Asia?*, East Gate Book, Armonk, New York 1995, pp. 95-129; Peter Nan-shong Lee, "The Chinese industrial State in historical perspective: From totalitarianism to corporatism", in Brantly Womack (ed.), *Contemporary Chinese Politics*, Cambridge University Press, New York, 1991, pp. 153-179; Bruce Dickson, "Co-optation and corporatism in China: The logic of Party adaptation", *Political Science Quarterly*, vol. 115 n. 4, Winter 2000, pp. 517-540. For a critical review of the argument see Jude Howell, "Civil society, corporatism and capitalism in China", paper presented at the International Symposium on Labor Relations and Collective Bargaining in the Age of Globalization, Chinese Academy of Social Sciences, Beijing, 21-22 July 2012. About the new developments in Guangdong, see Ivan Franceschini, "Another Guangdong model: Labour NGOs and new State corporatism", *The China Story Journal*, 4 August 2012, <http://www.thechinastory.org/2012/08/post-labour-ngos>. Last access, 26 October 2012.

⁸⁵ Anita Chan, "Unionizing Chinese Walmart Stores", in Anita Chan (ed.), *Walmart in China*, Cornell University Press, 2011, pp. 199-216.

relationship with the Party-State. Yet, even this kind of institutional embeddedness may have its advantages. On one side, embeddedness may guarantee the ability of the union leadership to exert a significant influence on the legislative process; on the other, it may limit this influence only to those instances where the interests of the workers do not conflict with those of the State, with the reform of the State industry in the Nineties being the main case point. As the Chinese authorities are trying to foster a development model based on internal consumption instead of exports, we might see an increased commitment by the union to speak on the behalf of the workers, from the lower levels all the way up to the top. Nevertheless, even if at the moment there is no sign of tension, the Party remains very aware of the fact that the structural dependency of the union does not exclude the possibility of an "institutional conversion" of the ACFTU. As the events outlined in this chapter hint, in times of political or economic crisis, the union might feel compelled to distance itself from the Party and stand up for the workers, be it for sincere aspiration of independence or just for simple instinct of political survival. It happened in 1951, when the new political system was not fully established and the power relations between Party, State and society were not clear; it happened again in 1957, when the ACFTU tried to took advantage of the apparent political openings from the Party; and it happened one last time in 1989, when part of union leadership decided to stand by the students and the workers. In the end, history teaches us that, in spite of all the declarations of fidelity to the Party, the next crisis could be just around the corner.

3.

Chinese Labour NGOs: A Real Force for Political Change?

If I had started by telling the Ch'anghsintien workers that they must overthrow the Peking government and set up a dictatorship of the workers, they would have been frightened away. It would have been impossible even to establish the school for workers' children.¹

Zhang Guotao

The long forgotten history of the first Chinese labour movement can yield many insights into today's China.² In particular, as the quote at the beginning of this paper attests, the memoirs of Zhang Guotao, one of the founders of the CCP and a labour agitator in the early Twenties, are a goldmine for whoever wants to gain a better understanding of the challenges faced by Chinese labour activists today. As a young student coming from a well off family, Zhang knew very well how hard it was to earn workers' trust and get them interested in political struggles. For example, in 1919, leading a students' propaganda group, he visited for the first time Changxindian, then a major railway centre not far from Beijing. On that occasion, workers had welcomed the students and had invited them to take advantage of their meagre hospitality. Zhang eagerly ate everything, careless about the flies flying over the food, while his companions politely refused. As he recounted fifty years later:

I was the only one who gulped the food down noisily, like the workers, while talking patriotism with them. Perhaps because of my conduct the workers did not create a mental division between me as a student and themselves as workers. I was able to establish an intimate relationship with

¹ Chang Kuo-t'ao, *The Rise of the Chinese Communist Party 1921-1927*, The University Press of Kansas, Lawrence, 1971, p. 126.

² Jean Chesneaux, *The Chinese Labor Movement 1919-1927*, Stanford University Press, Stanford, 1968.

some of them as a result.³

In a simple anecdote, Zhang not only gives us some hints about the reasons why Chinese authorities today maintain a distrustful attitude toward this kind of organizations - after all, the CCP at the beginning was not so different from today's labour NGOs - but also brings to our attention one of the fundamental challenges for labour activists, today as one century ago: earning workers' trust.

Although the relevant literature does not fail to point out the limits and the challenges that the so-called "labour NGOs" are facing in the Chinese context, it systematically dismisses the issue of the relationship between these organizations and the workers, occasionally describing them as a "Chinese workers' self-salvation movement".⁴ Furthermore, the available literature generally agrees with the idea that these grassroots organizations contribute to legal reform and raise social demands for legal justice.⁵ As a matter of fact, the narrative about Chinese civil society organizations (CSOs) active in defending migrant workers' rights sees these groups as "increasingly powerful instruments through which Chinese people take part in public affairs, develop and articulate personal interests, and collectively form a more active and participatory citizenry."⁶ This is in line with the mainstream literature on NGOs, a field where, as Claire Mercer has pointed out, these organizations have become inextricably bound up with concepts like civil society, democracy, good governance and social capital - terms employed as if their meaning were universal and unequivocal - and where there is a tendency to take NGOs' positive role in democratization as axiomatic.⁷

While in the last few years various scholars in the field of development studies have started raising concerns about this manichean view of NGOs' role in political processes, voices that express dissonant views about the political role of labour NGOs in China are still rare. Among them, the most prominent is undoubtedly Ching Kwan Lee, who in a paper recently co-authored with Yuan Shen argued that Chinese NGOs are little short of an "anti-solidarity machine" undermining workers' collective power. Some critical insights can also be

³ Chang Kuo-t'ao, *The Rise of the Chinese Communist Party 1921-1927*, p. 114.

⁴ Huang Yan, "Quanqiuhua beijing xia de laogong zijiu" ("Self-salvation on the background of globalization"), *Nanfengchuang*, 16 November 2007, <http://news.sohu.com/20071116/n253290146.shtml>. Last access, 20 August 2011.

⁵ Ching Kwan Lee, "Is labor a political force in China?" in E. J. Perry and M. Goldman (eds.), *Grassroots Political Reform in Contemporary China*, Harvard University Press, Cambridge MA, 2007, pp. 228-252. See also Hong Zhang and Marsha Smith, "Navigating a space for labor activism: Labor NGOs in the Pearl River Delta of South China", in Jonathan Schwartz, Shawn Shieh (eds), *State and Society Responses to Social Welfare Needs in China*, Routledge, New York, 2009, pp. 66-88.

⁶ Joseph Cheng, Kinglun Ngok, Wenjia Zhuang, "The survival and development space for China's Labor NGOs: informal politics and its uncertainty", *Asian Survey*, vol. 50 n. 6 (2010), pp. 1082-1106.

⁷ Claire Mercer, "NGOs, civil society and democratization: a critical review of the literature", *Progress in Development Studies* 2, 1 (2002), pp. 5-22.

found in the work of Chloé Froissart, who, although being relatively positive in her assessment of these organizations, claims that “[labour] NGOs are [...] also working for the benefit of the Party-State, to which they adhere, minimising social conflict and orienting reforms in a direction that can help the Party to maintain its power. While an integral part of the social movement of migrant workers, these organizations also delimit this social movement in their own way. These limitations are why some migrants question these NGOs’ legitimacy to represent them – which may be migrant workers’ first step towards a more assertive and autonomous stand.”⁸ It is worth noticing that this is one of the few passages in the existing literature that mentions the lack of trust among those very workers who, according to the narrative, should look at these organizations as their representatives.

Though recognizing that it is not possible to generalize, this chapter challenges not only the idea of labour NGOs as a progressive force for political change, but also the belief, widely shared among the international labour movement, that these groups are sprouts of independent unionism in China. In particular, I will argue that many of these NGOs are struggling as a consequence of a substantial lack of “social capital”, due to the weakness of their relations with the workers and the State. In this paper I will also argue that focusing on the relationship between these organizations and the State - as much of the existing literature does - is risky, because it means overlooking the relations with other important actors, especially workers and foreign donors.

This chapter is based on long periods of fieldwork and engagement with Chinese labour NGOs over a span of three years. During my fieldwork, which took place from January 2009 to December 2011, I observed on a daily basis the implementation of four international cooperation projects carried out by an European trade union NGO and three different Chinese labour NGOs.⁹ After the first six months, when I served as project manager in the first of the four projects, the remaining part of the fieldwork was carried out in the role of part time assistant of the resident project manager. Furthermore, besides participating in various activities, attending the meetings between partners and constantly monitoring the financial situation of the various projects, I conducted thirty in-depth interviews with the leaders and

⁸ Ching Kwan Lee and Yuan Shen, "The anti-solidarity machine? Labor nongovernmental organizations in China", in Sarosh Kuruvilla, Ching Kwan Lee and Mary E. Gallagher (eds.), *From Iron Rice Bowl to Informalization*, Cornell University Press, Ithaca and London, 2011, pp. 173-187; Chloé Froissart, "The rise of social movements among migrant workers: uncertain strivings for autonomy", *China Perspectives*, n. 61 (2005), pp. 30-40.

⁹ These projects were: a) a project funded by the European Commission within the programme of the European Instrument for Democracy and Human Rights (EIDHR); b) a project funded by a branch of an European union and aimed at realizing an investigation on the labour conditions in some foreign invested enterprises; c) a project funded by an European union NGO and aimed at improving legal assistance to fight discrimination at work; d) a second project funded by the European Commission within the EIDHR programme.

the personnel of sixteen grassroots labour NGOs, mainly based in Shenzhen. Whenever possible, the interviews were conducted in the offices of the NGOs and materials were collected. In order to avoid any bias in the results, these interviews were carried out as an independent researcher.

After an explanation of the theoretical framework and a short overview of the historical process which led to the birth of labour NGOs in China, this chapter will analyse the relations among these NGOs and four fundamental actors: the State, the workers, international donors and other organizations in the same sector. But first a clarification about the sampling method adopted in this paper is needed. As many scholars have already pointed out, the term "NGO" as used in the international literature is considerably vague.¹⁰ In this chapter, the "labour NGOs" I refer to are organizations which fulfil three conditions: first of all, their mission has to be related to the protection of migrant workers' rights; second, they need to have an office or a physical base; finally, they need to have obtained some kind of official registration as companies or, possibly, as non profit organizations. All the groups involved in this research fit this description, except for one NGO that did not have any registration but was physically based in an apartment rented by the founder and another one which had recently given up its office for economic difficulties. Although recognizing the fact that migrant workers informal organizations could be classified as "labour NGOs" as well, they are excluded from the focus of this paper.

Which social capital?

The theoretical framework of social capital in its present sense has been developed by James Coleman in the late Eighties. According to Coleman's definition, "social capital is defined by its function. It is not a single entity but a variety of different entities, with two elements in common: they all consist of some aspect of social structures, and they facilitate certain actions of actors – whether persons or corporate actors – within the structure."¹¹ Remarkably similar is the definition devised by Pierre Bourdieu, who wrote about social capital as "the aggregate of the actual or potential resources which are linked to possession of a durable network of more or less institutionalized relationships of mutual acquaintance and

¹⁰ Nidhi Srinivas, "Against NGOs? A critical perspective on nongovernmental action", *Non Profit and Voluntary Sector Quarterly*, n. 38, 2009, pp. 614-626.

¹¹ James Coleman, "Social capital in the creation of human capital", *The American Journal of Sociology*, vol. 94, Supplement: Organizations and Institutions: Sociological and Economic Approaches to the Analysis of Social Structure (1988), pp. S95-S120.

recognition.”¹²

While Coleman and Bourdieu used the concept mainly to describe the cognitive and social development of children, the idea of social capital entered the field of development studies as a result of the publication of Robert Putnam’s *Making Democracy Work* in 1993.¹³ Analysing the nature and intensity of interaction in civil society in different parts of Italy, in this book Putnam argued that the “networks of civic engagement” are the principal actors in determining the performance of regional government. In his view, a strong civil society would guarantee a strong government, while a weak civil society would greatly impair the government’s performance. According to Putnam, social capital arises from civic engagement and it is to be understood as the “features of social organization, such as networks, norms and social trust, that facilitate coordination and cooperation for mutual benefit.”¹⁴

While this argument struck a responsive chord in the context of recognition in the Nineties of the problems of governance and of the role of civil society, many scholars have highlighted the theoretical ambiguity of the term and its intrinsic determinism.¹⁵ According to Putzel, “social capital has become the latest elixir within discussions about development, becoming ‘all things to all people’ in a fashion not dissimilar to the fate of ‘human development’ and ‘sustainable development’ in recent years.”¹⁶ In 2002, Adler and Kwon have counted no less than twenty different definitions of social capital in the existing literature, distinguishing between “bridging views”, which focus primarily on social capital as a resource that inheres in the social network tying of a focal actor or other actors; “bonding views”, which focus on collective actors’ internal characteristics; and a third group worded as to be neutral on this internal/external definition.¹⁷

While the literature on social capital continues to flourish, some authors have dismissed Putnam’s theorization of social capital and retained the theoretical value of the earlier theorizations.¹⁸ This paper will follow the same tradition, referring to social capital as

¹² Pierre Bourdieu, “The forms of capital”, in A. H. Halsey (ed.), *Education: Culture, Economy and Society*, Oxford University Press, New York, 1996, p. 51.

¹³ Robert Putnam, Robert Leonardi and Raffaella Nanetti, *Making Democracy Work: Civic Traditions in Modern Italy*, Princeton University Press, Princeton, 1993.

¹⁴ Robert Putnam, “Bowling alone: America’s declining social capital”, *Journal of Democracy*, 6(1) 1995, pp. 65-78.

¹⁵ John Harriss and Paolo De Renzio, “‘Missing link’ or ‘analytically missing? The concept of social capital, an introductory bibliographic essay”, *Journal of International Development*, vol. 9 n. 7, 1997, pp. 919-937.

¹⁶ James Putzel, “Accounting for the ‘dark side’ of social capital: Reading Robert Putnam on democracy”, *Journal of International Development*, vol. 9 n. 7, 1997, pp. 939-949.

¹⁷ Paul Adler and Seok-Woo Kwon, “Social capital: Prospects for a new concept”, *The Academy of Management Review*, vol. 27 n. 1, January 2002, pp. 17-40.

¹⁸ Bob Edwards, Michael Foley, “Civil society and social capital beyond Putnam”, *American Behavioral Scientist*, n. 42 1998, pp. 124-139.

the concept initially devised by Coleman and Bourdieu. It is important to underline that this kind of social capital is not only the feature of governments or individuals. Coleman himself underlined that “because purposive organizations can be actors (‘corporate actors’) just as persons can, relations among corporate actors can constitute social capital for them as well.”¹⁹ From this point of view, assessing the relations between Chinese labour NGOs, the State, the workers and the donors not only will allow us to gain a better understanding of the role of these organizations within the context of Chinese society, but also will highlight the fact that the role played by organized groups in civil societies depends crucially on the larger political setting and the complex and sometime contradictory interactions with other actors, not on some supposed general rule which equates NGOs and democratization or good governance, as Putnam and many other NGOs' idealists would like it to be.²⁰

Setting the scene

Much has been written about civil society in China, with many labels put forward in order to adapt this concept to the Chinese reality. Nevertheless, there seems to be no disagreement on the fact that Chinese civil society has gone through at least four different phases of development: a first phase, from the late Seventies to the Spring 1989, when commercial, financial and professional organizations, taking advantage of very relaxed political and legal framework, experienced an extraordinary growth; a second phase, between the repression of 1989 and the 1995 Fourth World Conference of Women, which was held in Beijing, when the political spaces available for these organizations shrank and there was a visible stoppage in the growth of Chinese CSOs; a third phase from 1995 to 2008, when, despite the rigid legal framework, CSOs experienced a new boom; a fourth phase from 2008 to today, when, on the wake of the Wenchuan earthquake, welfare-oriented NGOs rapidly started networking and partnering up with the State, while more rights-oriented ones encountered an increasingly repressive political environment.²¹

Labour NGOs appeared relatively late on the Chinese scene, during the above-mentioned third phase of development. Since the beginning, unlike other more welfare-

¹⁹ James Coleman, “Social capital in the creation of human capital”, cit., p. S98.

²⁰ Michael Foley and Bob Edwards, “The paradox of civil society”, *Journal of Democracy*, vol. 7 n.3, July 1996, pp. 38-52.

²¹ Jude Howell, “Civil society and migrants in China”, in Rachel Murphy, (ed.) *Migrant Labour and Social Development in Contemporary China*, Routledge, London, 2008, pp. 171-194. On the impact of the Wenchuan earthquake on Chinese civil society, see Shawn Shieh and Guosheng Deng, “An emerging civil society: The impact of the 2008 Sichuan earthquake on grass-roots associations in China”, *The China Journal*, n. 65 January 2011, pp. 181-194.

oriented organizations, for reasons of political sensitivity they have been forced to operate informally, within the sphere of what Mary Gallagher has defined the "informal civil society".²² Their only choice was between registering themselves as companies or not registering at all. The first labour NGOs appeared in the middle of the Nineties, on the wake of the Fourth World Conference on Women. The pioneering organizations were the "Migrant Women's Club" (*Beijing dagongmei zhi jia*), set up in Beijing in 1996 by the organizers of the publication "Rural Women Knowing All", and the "Beijing Action for the Community Sisters" (*Beijing shequ jiemei xing*), also based in the capital. Both registered as companies in 1996. Roughly at the same time in Shenzhen a group of activists founded the Chinese Working Women Network (*nügong guanhuai*).²³

It is not surprising that the first labour organizations in China had a strong focus on gender issues. After the chill in the relations between State and society that followed the events of the Spring 1989, the World Congress on Women hosted in Beijing acted as a detonator for the rebirth of the Chinese civil society, with women's rights organizations on the frontline. The first labour NGOs without gender bias appeared only in the late Nineties, with the "Little Bird Mutual-Aid Hotline" (*Beijing xiaoxiaoniao huzhu rexian*) founded in Beijing in 1999, and the "Migrant Workers Document Handling Service" (*dagongzu wenshu chuli fuwubu*), set up in Guangzhou in 1998. Since then labour NGOs started multiplying, both in the capital and in the Pearl River Delta, to such an extent that some Chinese commentators described the beginning of a "Chinese labour self-salvation movement" (*laogong zijiu yundong*).²⁴

A new phase of growth among the ranks of labour NGOs was registered in the early years of the new century, following the shift in the public discourse on migrant labour on the wake of the rise to power of Hu Jintao and Wen Jiabao.²⁵ Once again, it is not surprising that among the thirty labour NGOs listed in an unpublished survey recently conducted by Zhang Zhiru, the founder and leader of the Shenzhen based Chunfeng Labour Disputes Service Centre (*chunfeng laodong zhengyi fuwubu*), only eight were registered as companies between 1996 and 2001, against twenty-one which obtained their registration between 2002 and

²² Mary E. Gallagher, "China: The limits of civil society in a late Leninist state", in Muthiah Agalappa (ed.), *Civil Society and Political Change in Asia: Expanding and Contracting Democratic Change*, Stanford University Press, Stanford, 2004, pp. 419-454.

²³ On *Nügong guanhuai* see Pun Ngai and Chan Wai Ling, "Community based labour organizing", *International Union Rights*, vol. 11 n. 4 (2004), pp. 10-11; Pun Ngai, "The making of a global dormitory labour regime", in Rachel Murphy (ed.), *Migrant Labour and Social Development in Contemporary China*, pp. 154-170.

²⁴ Huang Yan, "Self-salvation on the background of globalization".

²⁵ David Shambaugh, *Chinese Communist Party: Atrophy and Adaptation*, University of California Press, Berkeley, 2008.

2010.²⁶

According to the available evidence, in mainland China there are just a few dozens labour NGOs. Unfortunately, the only data are based on personal estimates of people who work in the sector. For example, Liu Kaiming, founder and Director of the Shenzhen based Institute of Contemporary Observation (*dangdai shehui guancha yanjiusuo*), in 2007 told to the Chinese press that in the Pearl River Delta there were about fifty labour NGOs with more than 200 people involved totally.²⁷ Roughly at the same time, Huang Yan from the South China Normal University told another reporter that in the Delta there were about thirty organizations, each employing two or three activists.²⁸ Zhang Zhiru lists thirty organizations in the whole country, providing their address and some basic information about their legal status and activities.

The geographic distribution of the organizations in Zhang Zhiru's list is uneven, with twelve in Shenzhen, seven in Beijing, three in Canton, two in Dongguan and only one in Zhuhai, Huizhou, Qingdao, Chongqing, Yongkang and Xiamen. Arguably, the fact that the majority of Chinese labour NGOs today operates in just two cities, Beijing and Shenzhen is not only because in the last decades both the metropolis have attracted a huge rural workforce, with the ensuing social problems, but most of all because both areas present a competitive advantage in the access to foreign funds. In Beijing this is facilitated by the presence of international embassies and institutions, as well as a large international business community; in Shenzhen by the proximity of Hong Kong. We can also speculate that the attitude of local authorities has played a role in determining this distribution as well, with some local governments considered hostile to CSOs, and others, like Shenzhen's, seen as far more "open". That these organizations rely so strongly on the availability of international donors and the attitude of the authorities - and not so much on migrant workers' presence and support - is a fundamental point in order to explain the dynamics that inform these organizations' existence and survival.

²⁶ The year of registration is not specified for one of the organizations. I have been able to consult the list updated to February 2011 thanks to the courtesy of Zhang Zhiru.

²⁷ Long Zhiben, "Shenzhen laogong weiquan zuzhi fuzeren beikan shijian diaocha" ("Investigation on the stabbing of a labour group leader in Shenzhen"), *Nanfeng Dushibao*, 16 December 2007, <http://news.sina.com.cn/c/2007-12-16/023413086539s.shtml>. Last access, 1 February 2012.

²⁸ Zhao Lingming, "Huang Qingnan beikan shijian beihou" (Behind the stabbing of Huang Qingnan), *Nanfengchuang*, n. 1 of 2008, available on <http://www.nfcmag.com/articles/110>. Last access, 1 February 2012.

There is a wide array of literature about State-society relations in China, with theoretical positions ranging from "corporatism" to "civil society", plus a series of intermediate concepts like "socialist corporatism", "agency corporatism", "semi-civil society" and "State-led civil society".²⁹ And yet, as Shawn Shieh pointed out, "State-NGO relations in China are becoming too complex and dynamic to be captured by one of these frameworks. [...] [They] do not fit into any single pattern; they assume different forms and dynamics across sectors and regions."³⁰ In particular, Shieh distinguishes among three different interactions modes, overlapping but not mutually exclusive: regulation, negotiation and societalization.

The concept of "negotiation" is particularly relevant in the realm of labour NGOs. Since these organizations do not have the possibility to get any kind of official recognition except if they register as companies, their very existence is bound to their ability to negotiate with the authorities. Generally, the first negotiation takes place in the first phase of an organization's existence, at the moment of the registration. Since as a precondition to register with the local Civil affairs bureaus, all the CSOs are required to find a "mother in law" (*popo*) willing to act as their supervisor, labour NGOs founders at first try to approach the local branches of the official union or of the Disabled Persons' Federation.³¹ All the NGO leaders that I interviewed stated that they had repeatedly sought to find a State agency or an institution willing to grant them an affiliation, but that all their efforts had been in vain. As a matter of fact, generally, their request of registration is not accepted and they have no other choice than registering as a company or not registering at all.

For example, an NGO leader, a former migrant worker, in 2004 tried to register an organization. On that occasion, local cadres had sent him from one office to the other, before referring him to the local branch of the trade union:

When we were trying to set up the Shenzhen migrant workers' association, I went to all the departments of Shenzhen's government: the office for the management of rented rooms, the labour bureau, the civil affairs bureau, the commercial bureau and every other government bureau. I looked everywhere for a unit willing to grant us an affiliation, I went to any department

²⁹ Shawn Shieh, *Beyond corporatism and civil society. Three modes of state-NGO interaction in China*, in Jonathan Schwartz, Shawn Shieh (eds), *State and Society Responses to Social Welfare Needs in China*, pp. 22-41.

³⁰ *Ibid.*

³¹ Since 1 July 2012, a new provincial policy allows grassroots organizations to register with the local Civil Affairs Bureau without having to find an official sponsor. This may finally allow Guangdong labour NGOs to register as non profit entities.

with even a minimal connection with labour issues or with migrants, and I was bounced from one place to the other just like a ball. [...] Since I could not find a unit and I could not legally register the organization in any possible way, I wrote a letter to the Shenzhen city government and to the mayor. The letter was forwarded to the civil affairs bureau, which told me to go to the trade union. And what did the union say? This thing that you are setting up, isn't it a replacement for the union? Our government's departments already got a union, companies got unions, what are you setting up this thing for? [...] Isn't it an independent union? Of course it is not possible!³²

And yet, despite the impossibility to obtain any kind of official registration, many functionaries in private looked at this man's efforts with sympathy:

[Many officials] looking at our registration form and at our constitution said that we were really good. They also said: "I can't give you my approval, because the person who approves then has to take responsibility for it. How can I know if you are doing good things or bad things?" Many officials gave us a lot of support, saying that a young person like me was really not bad, but giving us their approval was out of discussion.³³

Some of my interviewees explicitly emphasized the fact that without the tacit approval and support of the authorities, their organizations would not be able to operate. According to a labour NGO leader:

If I said that we never received any support from the authorities, then I would be lying. If we hadn't received any support from the authorities, not a single one of our activities could have been carried out. Nevertheless, we have been conducting our activities for so many years now and the government has never said anything about supporting us. Many times they have just been tacitly agreeing and then you knew that you could do some things.³⁴

This tacit agreement which results from this negotiation implies not only the NGO's renunciation to carry out any kind of "sensitive" activities - like representing workers in strikes or collective disputes - but also a commitment to promote the legal discourse sanctioned by the State.³⁵ For example, according to one of my interviewees, during the so-called "wave of labour unrest" of the Spring 2010, some workers on strike went to the office of his organization seeking legal assistance, but he had to turn them down in order to avoid any trouble with public security. Just a tiny minority of labour NGOs accepts to deal with this kind of sensitive situations. In most cases, in order to survive these organizations focus their activities on more innocuous trainings about labour laws and on legal counselling aimed at addressing "ex post" cases of unpaid salaries and other individual rights' violations, so

³² Interview, Shenzhen, 11 February 2011.

³³ Interview, Shenzhen, 11 February 2011.

³⁴ Interview, Shenzhen, 21 February 2011.

³⁵ Mary Gallagher, *Contagious Capitalism: Globalization and the Politics of Labour in China*, Princeton University Press, Princeton, 2005.

becoming instrumental to the paramount goals of the authorities, maintaining social stability.

Negotiations often involve harassment by the authorities. Many of the NGO leaders I interviewed described how public security officials have the habit of inviting them to "have a tea" (*he cha*). While these meetings generally do not involve any kind of violence - some NGO leaders even described their relationship with their "handling officers" in friendly terms - in some cases public security officials went so far as to get their colleagues in other provinces involved in order to put pressure on the families of some of these NGO leaders. This pressure led more than one employee to leave his job. As one of my interviewees told me:

There has been a time when some national security officials used to go to our home villages in order to investigate our family situation. Public security over there went to my mom and asked: your daughter is already so old, let us have a look at your family planning. In 2008, national security often looked for me in order to "have some tea". They said: do you have time? Let's have some tea, talk for a while, be friends. Faced with this, some of our employees were scared, but most of them left after one or two years.³⁶

Nevertheless, even negotiating may not be enough to guarantee these organizations' survival. The latest example of State repression has taken place in the early months of 2012, when various Shenzhen labour NGOs have become targets of a wave of threats by the authorities and at least seven of them have been shut down.³⁷ Curiously enough, this happened in concomitance with the establishment of a new federation under the aegis of the provincial union, the "Federation of Social Service Organizations for Guangdong Workers" (*Guangdongsheng zhigong fuwulei shehuizuzhi lianhehui*). According to its constitution, this body will be in charge of

the reinforcement of the overall planning and the coordination with the various key positions; to assist, unite, support and make contact with labour social service organizations, bodies and specialized individuals, in order to provide public interest activities and services aimed at the workers, to protect workers' legal rights and interests, to stimulate harmonious labour relations and to push forward the realization of social justice and equity.³⁸

Various labour NGOs were invited to attend the meeting which led to the establishment of the Federation and some of them eventually even joined it as "members on probation"

³⁶ Interview, Shenzhen, 30 December 2010.

³⁷ Du Xiaotian, Zhang Renwang, "Laogong NGO: Chengzhang de fannao" (Labour NGOs: The worries of growing up), *Nanfang Ribao*, 3 September 2012, <http://finance.people.com.cn/n/2012/0903/c70846-18902574.html>. Last access, 10 October 2012.

³⁸ "Guangdongsheng zhigong fuwulei shehui zuzhi liehui zhangcheng (cao'an)" (Draft constitution of the Federation of Social Service Organizations for Guangdong Workers), art. 3.

(*bei'an tuanti huiyuan*). Since the same dynamics were replicated at the same time in other sectors of Guangdong civil society, for example under the leadership of the Women Federation, these new developments could be the premise for a remoulding of some sectors of civil society in a corporatist fashion, with the State not resiling from the use of threats and force to achieve its aims.³⁹ If this proves to be true, labour NGOs' ability to negotiate with the State will become more important than ever. In any case, these interactions suggest that Chinese labour NGOs lack what has been defined as "linking social capital", that is to say the kind of social capital which comes from connections between those with differing levels of power or social status e.g. links between the political elite and the general public or between individuals from different social classes.⁴⁰

Labour NGOs and the workers

While much has been written about the relationship between the State and labour NGOs, considerably less attention has been paid to the bond between these organizations and the workers. During my fieldwork, I found out that, exactly as Zhang Guotao wrote decades ago, many of these NGOs leaders and employees lament how hard it is to approach migrant workers and gain their trust. These difficulties have multiple causes. First of all, these organizations have to cope with migrants' high mobility. This prevents labour NGOs from developing not only the "social capital" necessary to take roots on the territory, but also an adequate "human capital" of volunteers and activists. According to a young employee of an organization focusing on women workers' rights, the fact that the people they approached and built a relation with often switched jobs and left after just a few months was the main difficulty her organization had to face.⁴¹

Another important issue derives from the fact that the staff in some of these organizations is mainly made up by young university graduates. These people do not have any experience nor share any common cultural background with the workers, thus it is hard for them to build a relationship with the people they are supposed to help. And yet, ascribing the difficulties these organizations encounter in relating to migrant workers to the issues of mobility, qualifications and social background of employees is reductive. Even those activists

³⁹ "Guangdong chengli guan'ai funü ertong da liameng" (Guangdong establishes a great league for the women and children", *Nanfang Ribao*, 28 May 2012, <http://news.worker.cn/c/2012/05/28/120528101754295462626.html>. Last access, 10 October 2012.

⁴⁰ Stephen Aldridge, David Halpern and Sarah Fitzpatrick, "Social capital: A discussion paper", Performance and Innovation Unit, Cabinet Office, 2002.

⁴¹ Interview, Shenzhen, 20 January 2011.

with worker background and years of experience in factories have complained about the troubles they have to go through in order to connect with the migrants they wish to help. The fact that communication problems go beyond social class' barriers is particularly evident in the following interview I had with two migrant workers then employed by a labour NGO:

A: When the workers (*gongyou*) come to us and do not get to the point, I feel...

B: Some workers go on and on repeating uninterruptedly the same thing, they simply can't make sense. We can't help them and at the same time we do not want to discourage them. We want to help them, but sometimes it is really annoying.⁴²

Another important point is that migrant workers rarely believe that someone outside the State is willing to provide them free assistance. A young migrant employed in a NGO focused on labour accidents and occupational diseases told me: "I wish that workers would come to us to seek help, it would all be so easy then! The hardest part of my job is finding the workers and convincing them to accept our help".⁴³ One of the main responsibilities of this young activist was visiting local hospitals looking for injured workers. When he found someone, he had to try to convince them of the goodness of his organization and of the free nature of the services they provided. According to him, he often had to compete with professional lawyers and "citizen representatives" (*gongmin daili*) offering the same services for fees. As he told me:

According to a traditional saying we have here in China, in the world there is no such thing as a free meal. When we talk to the workers, we do that as a non profit organization and we do not take anything from them, not materially, not spiritually, absolutely nothing at all. And yet, because of this Chinese tradition of "there are no free meals", everybody ask us: why do you want to help us? They cannot understand this point, that's all, but I am confident that some day in the future they will understand.⁴⁴

In spite of any reassurance or explanation, many migrant workers are persuaded that anybody who volunteers to help them has to have ulterior motives (*bieyou yongxin*). This is not so much because they are afraid of "political" troubles, as because they are very wary of the possibility of being victims of scams, in particular pyramid schemes (*chuanxiao*). As one of my interviewees, an NGO labour activist, told me:

What can I say? I believe that every person has a good heart, but them [the workers] are smart, they can see if you are one of them. For example, we never raise the issue of money, we are very

⁴² Interview, Shenzhen, 30 December 2010.

⁴³ Interview, Shenzhen, 8 February 2011.

⁴⁴ Interview, Shenzhen, 21 January 2011.

clear on this. For this reason they think: could it be that you are doing *chuanxiao* or some promotional activity? Could it be that after all you'll ask for money? Situation like these naturally happen. When we face injured workers it is easier: we are injured workers too and there is a feeling of mutual empathy.⁴⁵

During my fieldwork, I witnessed many manifestations of this distrust. For example, in January 2011 I took part in a training activity organized in a restaurant in Shenzhen's suburbs. The training, the first of a series, was aimed at giving migrant workers some basic ideas on how to use the Internet to protect their rights. The first class involved about twenty workers, recruited through the human resource manager of a company nearby, a woman who was in good terms with the NGO leader. While the trainer was inviting the workers to share their experiences, various clients of the restaurant were commenting: "Look at them, they are doing *chuanxiao*". On that occasion, I tried to persuade the trainer to get a private room upstairs, but he refused, arguing that if we did that the workers would have thought that this was some kind of scam and would have left instantly. Many of the beverages and the food provided for free were left on the table: despite every reassurance, the participants were still afraid that they would have been asked to pay for them.

This lack of trust and credibility should be read in the context of the general distrust of Chinese public opinion towards NGOs, foundations and other non profit entities.⁴⁶ Many scandals involving charities were reported by the press in recent years, with a huge impact on the perception of the public. Furthermore, some other interesting lessons can be learned from recent surveys on the trust towards legal institutions that surprisingly portrayed Chinese citizens as more trusting towards institutions that are closely associated with the State to a far greater extent than with non-bureaucratic actors.⁴⁷ If we apply these findings to NGOs' relationship with migrant workers, it could be argued that these organizations' distance from the State may be another factor that undermines their credibility in workers' eyes. This has been confirmed by some of my interviews. For example, a young activist told me:

The government did not grant us any official recognition, therefore we are in an awkward position because, you know, people come and ask us... "Precisely what do you do?" We say that we try to explain some laws and regulations or tell them how to protect their rights and so on... So they say: "Do you have any certificate from the government? And the answer is not,

⁴⁵ Interview, Shenzhen, 20 January 2011.

⁴⁶ Huang Xiaoyong, Cai Liqiang, "Zhongguo minjian zuzhi yinglai zhengce tiaozheng chuankou he zhongda fazhan qiji" ("China's civil organizations facing with the window of policy adjustment and significant opportunities of development"), in Huang Xiaoyong (ed.), *Zhongguo Minjian Zuzhi Baogao 2009-2010 (Report on civil society organizations in China in 2010)*, Shehui Kexue Wenzhai Chubanshe, Beijing, 2010, pp. 1-69.

⁴⁷ Pierre Landry, "The diffusion of legal institutions in China", in Guoguang Wu and Helen Lansdowne (eds.), *Socialist China, Capitalist China*, Routledge, London, 2009, pp. 138-168.

we do not have any. As a consequence they prefer not to accept our help.⁴⁸

All the testimonies quoted in this section come from activists fighting on the front line in organizations based in workers' communities, not from those cooperation professionals who sit in their comfortable offices in Hong Kong or abroad. This is not meant to generalize or to say that labour NGOs are useless in the eyes of Chinese workers, it is just to highlight one of the main challenges that labour activists have to face in China today, gaining migrant workers' trust. As I found out, in many cases, personal relations are the key to recruiting participants to trainings and activities. Furthermore, small allowances, free meals and reimbursements of transportation fees are necessary to entice them into taking part to the activities. If on one side this is unavoidable in a reality in which the activities have to be carried out in a semi-clandestine way, without any involvement of the media or publicity, on the other side this is clearly a symptom of a bigger and more worrying issue, that is these organizations' lack of appeal and credibility among migrant workers. Since trust is one of the main features of "social capital", this situation suggests once again labour NGOs' lack of it.

Labour NGOs and the international donors

Given the ambiguous relations with the State and the workers, these organizations' "social capital" can only come from the foreign donors, which supply them with most of the funds for their activities. In the context of an internal donations' market which is still immature and monopolized by foundations with connections with the State, this kind of dependence triggers at least three structural problems: first of all, since international funds are generally bound to projects which can last from a few months to a couple of years, labour NGOs cannot have any long term plan; second, in order to survive, labour NGOs feel bound to accept conditions set by the donors that are hardly feasible in China, for examples as regards accounting regulations; finally, the struggle for scarce funds originates a competition of sorts among labour organizations.

In line with previous findings by Jude Howell and Anthony Spires, during the fieldwork I noticed that international institutions active in supporting Chinese NGOs do indeed emphasize the issue of "capacity building", using cooperation as an educative tool aimed at improving technical skills and organizational capability among local grassroots

⁴⁸ Interview, Shenzhen, 21 January 2011.

groups.⁴⁹ And yet, such emphasis should not be overrated. Having actively taken part in the drafting of various project proposals for international donors, I observed that, in practice, this emphasis is little more than a formal issue, with "capacity building" being employed more as a keyword for obtaining a higher evaluation (exactly as other politically charged terms as "human rights", "participation" or "democracy"), than a real guideline for proposing meaningful activities.

This is even more evident in the case of Chinese labour NGOs. Given the scarcity of "social capital" when it comes to authorities and migrant workers, these organizations need to gain the trust of international donors. In order to do this, they have no other choice than adopting rhetorical devices emerging from international discourses about democracy and human rights. Furthermore, they also need to translate these concepts in a practice "saleable" to international donors and acceptable to Chinese authorities at the same time, emphasizing the participative approach of their projects, as well as the capacity building component.

Sadly enough, migrant workers' needs - and even their availability to participate - hardly feature in these speculations. Projects which look great on paper, in reality turn out to be a flop because of the lack of interest among migrant workers. For example, a project on empowering the workers through the Internet or on informing workers about their legal rights might appear very good in theory, but when it comes to implementing it, it might turn out that it is hard to find any migrant worker willing to take part into the trainings. Or a new hot line for aggrieved might be an activity which appeals to the donors as an important tool in enhancing migrant workers' access to justice, but then after a few months of implementation it might come up that the labour NGO, which has obtained substantial funding to run it, receive on average eighteen phone calls a month, as it happened in one of the projects which I observed. Even if some organizations report hundreds of phone calls and visits to their office a month, these claims are very hard to verify and in some cases questioned even by people who in the past worked for them.

In the middle of this plurality of discourses, languages and practices, handling the relations between a local labour NGO, an international NGO and the donors can become a very intricate issue. The relations among the various actors are often straddled by underground tensions. A survey on the assessment of international donors by Chinese NGOs carried out in June 2010 pointed out that the main perception among Chinese NGO leaders

⁴⁹ Anthony Spire, "Lessons from abroad: foreign influences on China's emerging civil society", *The China Journal*, forthcoming; Jude Howell, "Making civil society from the outside: challenges for donors", *The European Journal of Development Research*, vol. 12 n. 1 (2000), pp. 3-22.

was that “the relationship between donors and NGOs still follows a traditional top-down model, wherein the donor provides funding and the NGO must accept the conditions and terms set by the donor.”⁵⁰ According to this survey, Chinese NGOs leaders think that the relationship between themselves and the donors is fundamentally unbalanced, with funding recipients being responsible for detailing how grants were spent and the results they achieved, whereas donors themselves have little or no accountability.

Even if I could not find trace of this critical attitude among my interviewees, the practice of the projects I followed tells a completely different story. The NGOs involved in these projects strongly complained about the rigidity of the accounting rules set by the international donors, repeatedly lamenting the excessive burden of the paperwork and the inconsistencies between the administrative requirements and national and local tax regulations. Facing a reproach about the chaotic situation of the project's accounts coming from the foreign project manager, an NGO employee retorted: "I am far more interested in the activities of the project than in the trivial things related to its financial administration. This is the reason why when you talk with me about some rules, I just memorize some general principles and then I work according to these principles."⁵¹

Such dynamics create misunderstandings and distortions, which in turn lead to "strategies of resistance" against international donors: fake invoices, non-existent or pro-forma activities, the recycling of previously produced materials. Contrary to the common belief, in spite of retaining final control over the funds' flow, the foreign project manager is utterly powerless in front of this kind of behaviour from the local partner. Of course, he can refuse recognizing the expenditures, and yet he will not come to this decision lightly. Expat NGOs' staff in China often have to work in a semi-clandestine condition, so they are liable to be blackmailed. In extreme cases, the local partner can take advantage of this weakness, making the most of his ambiguous connections with the local State and the public security bodies. In the projects I observed, expat staff has been threatened at least twice: the first time, the threat came from a labour NGO leader who, faced with the refusal to reimburse an expenditures, hinted that he would have said something rather unpleasant in his next meeting with the public security; the second time, an employee of the same organization who had been fired by the NGO leader decided to seek compensation from the expat manager, threatening "to talk with his friends in Shenzhen public security" if he did not get what he wanted.

⁵⁰ Wang Hui, "International donors and domestic NGOs need to establish equitable partnerships", *China Development Brief*, n. 45 Spring 2010, <http://www.chinadevelopmentbrief.cn/?p=270>. Last access, 4 February 2012.

⁵¹ E-mail, 14 October 2011.

Stories like these highlight another limit of Chinese labour NGOs with regard of their relationship with international donors: their scarce transparency. In this case, the expat project manager found out that the local partner was paying the employees lower salaries than what was agreed on their contracts and obtained confirmation of the fact that many of the invoices and documents provided were fakes. This paradoxical situation - labour NGOs violating their employees' rights - is not an exception. In April 2009 a scandal rocked "On Action" (*zai xingdong*), a labour organization founded in Beijing in 2006. According to testimonies of former employees quoted by Chinese media, not only the participants to this organization's trainings were always the same workers, personal acquaintances of the founder, but the founder also refused to sign any labour contract with his staff, payed miserable salaries and did not want to pay for social security.⁵²

Relations among NGOs

One last relationship should be taken into account: the one among these labour NGOs themselves. In my interviews I found an attitude of deep distrust among the leaders of these organizations, with many of them pointing out each other's deficiencies and inner problems. Questioned about problems in transparency, many interviewees convened with the idea that the whole sector was flawed - one exclamation I heard very often during my fieldwork was "this industry of ours is too black!" (*women zhe ge hangye tai heile*) - and that other organizations could not be trusted. Many interviewees were keen to share gossips about the corruption of other organizations, especially the inner difficulties of one NGO whose founders were busy fighting each other through legal means, and the story of a NGO employee who had flown with a car and a bunch of money received from foreign donors. It does not matter if these stories were true or not - some of them were - they just exemplify the prevalent attitude in the sector, that is mutual distrust and unwillingness to cooperate.

There are examples of NGOs signing together open letters or sending people to take part in each other's activities, but these actions should not be overestimated as signs of a rising *esprit de corps*. Even if the dominant discourse implies that Chinese authorities, both at the central and at the local level, are very wary towards any kind of network among grassroots organizations and that scarcity in funding leads to competition among these groups, there

⁵² Du Zhiying, "NGO 'Zai Xingdong' zaoyu xinren wei'ji" ("The NGO 'On Action' ends up in a trust crisis), *Gongyi Shibao*, 7 April 2009, on <http://www.chinadevelopmentbrief.org.cn/newsview.php?id=410>. Last Access, 18 July 2011.

could be other, more personal, reasons for the absence of such a network among Chinese labour NGOs. For example, in one of the projects that I observed, the expat project manager tried to get two organizations to cooperate on a series of small activities. It turned out to be a failure, as one of the organization started acting as if it was a boss contracting out the job to the other, instead of cooperating in realizing the training program and materials. In that case, the expat manager had to act as a mediator between the two, in order to guarantee that the activities were carried on. This evidence suggests that Chinese labour NGOs today, taken as an industry, do not possess any substantial "bonding social capital".

Conclusions

An analysis of Chinese labour NGOs which takes into account their interactions with the State, the workers and the donors highlights the fact that these organizations suffer from a serious lack of "social capital". Since these organizations' survival depends on the support of foreign donors and their availability to negotiate with the State, the idea of referring to them as a "self-salvation movement" among Chinese workers seems highly questionable, not only for what concerns the "movement" (*yundong*), but also with regards to the idea of "self" (*zi*) salvation. Chinese labour NGOs are scattered and lack any coordination, so they can hardly be defined as a "movement", not to mention the fact that their bond with the workers, their supposed "constituency", is controversial to say the least. Given their mixed relationship with the authorities, their ability to exert a significant influence on local and central policies is questionable at best. At the same time, due to their precarious legal status, they are unable to represent workers in sensitive situations as strikes and labour stoppages.

These NGOs are so fragmented and disconnected from their supposed constituency that the narrative depicting them as important forces contributing to legal reform and raising social demands for legal justice sounds as an overstatement. And yet, as I have written above, it is not possible to generalize. Each organization has its own features and some of them are doing a really important job guaranteeing migrant workers' access to justice and bringing Chinese workers' plight to the attention of the media. In such a context, it is important for media operators, scholars and donors to reassess their approach toward this sector of Chinese civil society, avoiding jumping to conclusions after only a summary knowledge of these organizations' history, management style and activities. As the many strikes and labour stoppages in the world factory point out, migrant workers will save themselves for sure. It is the role these organizations will play in this "self-salvation" that is still uncertain.

4.

Migrant Workers and the Law: Evidence from a Survey on the Italian Metal Mechanic Companies in Shenzhen and Chongqing

When in the Spring of 2010 the workers of the Honda plant in Nanhai first went on strike asking for higher salaries and a representative union, nobody could have foreseen the impact that this event would have had on the international discourse on labour and rights in China.¹ The Honda protest - along with a series of other strikes which took place in the following months - was hailed in the Chinese and international press as the sign of a "rights awakening" among migrant workers. This not only challenged the idea of the Chinese workers as passive and unaware entities, little more than mechanic extensions of the productionline, but also inserted new life in the age-old debate on worker activism in China.

The narrative of the Chinese worker as a passive entity has roots which go back to the pre-reform era, when Chinese labour was organized around the structure of the "work unit" (*danwei*). As we have seen in the first chapter, the authority relations within the *danwei* put the Chinese workers in a position of weakness *vis-à-vis* the management and the Party, a situation which Andrew Walder described as a form of "organized dependence", in which workers were subordinated "economically on their enterprises, politically on the party and management, and personally on supervisors."² With the smashing of the "iron rice bowl" and

¹ On the Honda strike see Chris King-Chi Chan and Elaine Sio-leng Hui, "The dynamics and dilemma of workplace trade union reform in China: The case of the Honda workers' strike", *The Journal of Industrial Relations*, vol. 54 n. 5 November 2012, pp. 653-668.

² Andrew Walder, *Communist Neo-Traditionalism*, University of California Press, Berkeley 1986.

the emergence of a thriving private sector, the regime of organized dependence rapidly declined and was replaced by a labour relations system in which workers were blatantly exploited, especially young migrant workers coming from the countryside. In fact, since the early Nineties Chinese workers have often been described as being "under assault" by the forces of globalization and international capitalism.³

In such a context, the Honda strike represented a turning point not so much for Chinese industrial relations, as for the discourses on labour and rights in China. Echoing the coverage of the strike on the Chinese media, many prominent global magazines and newspapers came out with headlines as "The rising power of the Chinese worker" (*The Economist*), "The rise of a Chinese workers' movement" (*Businessweek*), "An independent labor movement stirs in China" (*The New York Times*).⁴ Various scholars joined this chorus, some of them underlining that Chinese workers were then "protesting in a position of relative strength after a long period of perceiving that the economic and political trends were against them."⁵ Of course, this discourse is not entirely new - the literature on worker protests in China abounded well before 2010⁶ - but the narrative which emerged in the wake of the Honda strike presented at least two original features: first, a strong emphasis on the generational nature of worker activism in China, with younger workers generally described as being more pro-active and ready to stand up against their employers; second, a focus on the issue of workers' rights consciousness.

The generational component of the discourse underlines the rise of a "new generation of migrant workers" (*xin shengdai nongmingong*) in China. This term - which appeared for the first time in an official document in early 2010 - generally refers to those migrant workers who were born in the Eighties and in the Nineties, a figure which an official survey carried out in 2009 put at more than 84 million workers, 58,4% of the total migrant workforce in China.⁷ Since the Honda strike, many scholars and journalists spent enthusiastic words to

³ Anita Chan, *China's Workers under Assault: The Exploitation of Labor in a Globalizing Economy*, M.E. Sharpe, New York, 2001.

⁴ "The rising power of the Chinese worker", *The Economist*, 29 July 2010, <http://www.economist.com/node/16693333>, last access on 23 December 2012; Dexter Roberts, "The rise of a Chinese worker's movement", *Bloomberg Businessweek Magazine*, 10 June 2010, http://www.businessweek.com/magazine/content/10_25/b4183007366131.htm, last access on 23 December 2012; Keith Bradsher, "A labor movement stirs in China", *New York Times*, 10 June 2010, www.nytimes.com/2010/06/11/business/global/11strike.html, last access on 23 December 2012.

⁵ Mary Gallagher, "'We are not machines': Teen's spirit on China's shopfloor", *The China Beat*, 23 August 2010, <http://www.thechinabeat.org/?p=2538#more-2538>. Last access, 12 November 2012.

⁶ See for example Ching Kwan Lee, *Against the Law: Labor Protests in China Rustbelt and Sunbelt*, University of California Press, Berkeley 2007; and Chris Chan, *The Challenge of Labour in China: Strikes and Changing Labour Regime in Global Factories*, Routledge, London and New York, 2010.

⁷ National Bureau of Statistics of China, "Xin shengdai nongmingong de shuliang, jiegou he tedian"

describe these workers' self-awareness and willingness to stand up for their rights, drawing rough comparisons with the passivity and availability to "eat bitterness" (*chiku*) for the older generations. To quote just an example, Chang Kai, a prominent scholar from People's University who was directly involved in the Honda strike as a legal counsellor of the striking workers, described his encounter with the young Honda workers in these terms:

After I got in touch with them, I was amazed by their quality (*suzhi*) and their abilities. [...] Their growth and their development basically have nothing to do with farmers. This is a generation of new people provided with culture, ideals and, especially, legal consciousness (*falu yishi*) and rights consciousness (*quanli yishi*). They are different from the previous generation of State workers, as they are different from their predecessor of the first generation of migrant workers. They do not seek the right to the "mastery of the State" (*zhurenweng*) as some State workers do and they are not willing to endure passively the hardship as the first generation of migrant workers did.⁸

Who are these young migrant workers? A frequently quoted survey carried out by the All-China Federation of Trade Unions (ACFTU) in the Spring of 2010 reports that on average they are twenty-three years old and leave their homes when they are sixteen; only 20% of them are already married; 26% have attended high school and 36,9% a technical school; only 18,2% have left the countryside in order to "make money"; 89,4% do not have the necessary knowledge and skills to work in the fields and no more than 11,3% consider himself or herself as a "farmer", with just 1,4% planning to go back to the countryside to work the fields.⁹ The same survey concludes that the new generation of migrant workers shows six distinctive features: first, their purpose in migrating is not to "improve their existence", but "to gain life experience" and "follow a dream"; second, they do not just ask for the respect of the minimum labour standards, but they want decent jobs and opportunities of professional development; third, they see themselves as "workers" and not as "farmers"; fourth, they do not feel as "guests" in the cities, but desire to enjoy a stable life in an urban context; fifth, they are more conscious about their rights and more active in pursuing them; finally, they attribute more importance to psychological and sentimental needs than to material needs.¹⁰

These are the very features which regularly occur in the journalistic and academic

(Characteristics, structure and figures of the new generation of migrant workers), 11 March 2011, http://www.stats.gov.cn/tjfx/fxbg/t20110310_402710032.htm. Last access, 23 December 2012.

⁸ Chang Kai, "Fuquan xin gongren" (New workers seizing their rights), *Zhongguo Gaige*, n. 9 September 2010, available online on <http://magazine.caing.com/chargeFullNews.jsp?id=100175499&time=2010-08-31&cl=115>. Last access, 15 December 2010.

⁹ ACFTU, "Guanyu xinshengdai nongmingong wenti de yanjiu baogao" (Rapporto di ricerca sulla questione dei lavoratori migranti di nuova generazione), *Gongren Ribao*, 21 giugno 2010, disponibile in rete su http://news.xinhuanet.com/politics/2010-06/21/c_12240721.htm. Last access, 18 November 2012.

¹⁰ Ibid.

literature on young migrant workers. Yet, to put them into perspective, it is important to make some theoretical distinctions, in particular for what concerns the implications of terms as "rules consciousness" and rights consciousness. As pointed out by Li Lianjiang in a recent paper, rules consciousness can be defined as "a combination of awareness of the necessity for protection from *local* rule-enforcement authorities and eagerness to obtain such protection through direct or indirect participation in rule-enforcement," while rights consciousness is "a combination of awareness of the necessity for protection from *central* rule-making authorities and eagerness to acquire such protection through direct or indirect participation in rule-making."¹¹ For years, all the available evidence has suggested that Chinese workers had a well developed "rules consciousness", but just a limited rights consciousness. The fact that Chinese labour unrest in the reform-era had economic roots and was aimed at asking no more than what had already been stipulated by law was usually quoted to prove this point. As Anita Chan wrote in a comparative study on strikes in China and Vietnam: "For about two decades Chinese workers have tended to seek no more than being paid at least the legal minimum."¹² Then, in another paper co-authored with Kaxton Siu, she further argued that "the majority of present-day Chinese migrant workers are still waging isolated uncoordinated rights-based protests and strikes. Only a few strikes have gone beyond rights-based demands to an interest-based level by requesting more than what is stipulated in current Chinese labour law. Only very few Chinese migrant workers are class conscious enough to ask for the setting up or re-election of workplace trade unions, or to organize strikes at regional and country-wide levels, or beyond individual factories."¹³ In this respect, the Honda strike was indeed an exception, but it still remains to be seen whether this is the beginning of a new trend or only an isolated case.

In the past few years, some specific researches have addressed the issue of migrant workers' knowledge and perception of the law. In a study published in 2007, Mary Gallagher argued that Chinese workers have mixed feelings about the law, an attitude which she defines as "informed disenchantment."¹⁴ In substance, Chinese workers who get to use the law go through a process of disenchantment in which they pass from high expectations of success to

¹¹ Li Lianjiang, "Rights Consciousness and Rules Consciousness in Contemporary China", *The China Journal*, n. 64 July 2010, pp. 47-69.

¹² See Anita Chan, "Strikes in China's Export Industries in Comparative Perspective", *The China Journal*, n. 65 January 2011, pp. 25-51. Quote from p. 46.

¹³ Anita Chan and Kaxton Siu, "Chinese migrant workers: Factors constraining the emergence of class consciousness", in Beatriz Carrillo and David S G Goodman (eds.), *Workers and Peasants in the Transformation of Urban China*, Edward Elgar, London, 2012, forthcoming.

¹⁴ Mary Gallagher, "Hope for Protection and Hopeless Choices: Labor Legal Aid in the PRC", in Elizabeth Perry, Merle Goldman (eds.), *Grassroots Political Reform in Contemporary China*, Harvard University Press, Cambridge, Massachusetts, 2007, pp. 196-227.

a very negative evaluation of the effectiveness of the legal process. As a result, the entire system revolving around the administration of justice ends up producing a group of citizens who are perfectly aware of the legal mechanisms but completely disenchanted, an element of instability for Chinese society. The limit of Gallagher's research is that she focuses on workers who have already experienced the limits of the legal system, having sought help from a legal aid centre. These people have already developed some consciousness in the legal field, therefore they not only can recognize a violation of their rights, but have also already experienced the ineffectiveness of the law. Instead, scarce research has been undertaken to gain a better understanding of what the common migrant worker - the one who probably has never had any direct contact with the law - know or think about the law. In fact, even the existing researches usually present weak arguments. For example, in a recently published paper based on 2.617 interviews carried out in 2005, Linda Wong reported that 70,1% of the migrant workers she interviewed were aware of the Labour Law.¹⁵ And yet, she failed to specify what she meant when she wrote that these workers were "aware" of the Law.

This chapter will tackle the relationship between migrant workers' age and their knowledge of and expectations towards the law on the basis of evidence collected in a survey carried out in 2012 in six Italian-managed metal mechanic factories in the Shenzhen and Chongqing areas. In particular, I will argue that in order to gain a better understanding on the shifting dynamics of worker activism in today's China, it is important to avoid easy generalizations which more often than not are born out of misplaced wishful thinking about the revolutionary potential of the Chinese workers. In this chapter, I will address three fundamental issues in the narrative of the new generation of migrant workers: first, the idea that younger workers are less willing to work hard; second, that they are more aware of their rights; third, that they are more likely to "rebel" and resort to collective actions. Instead of resorting to the classic distinction between workers born before and after 1980, for analytical purposes I will divide the surveyed workers into three cohorts: those who were born before 1980, those who were born in the Eighties and those who were born in the Nineties.

Methodology and sample

This chapter will draw from primary documentation, survey, field research and official statistics. Serious researches about Italian investments in China are still scarce. And it could

¹⁵ Linda Wong, "Chinese migrant workers: Rights attainment deficits, rights consciousness and personal strategies", *The China Quarterly*, n. 208 December 2011, pp. 870-892.

not be otherwise, if we consider that the Italian entrepreneurial presence in the country is minimal. According to a joint report issued in 2011 by the Italian Ministry of Foreign Affairs and the Italian Trade Promotion Agency, in China there are about two thousand Italian companies, mainly active in the textile and mechanic industries.¹⁶ In 2010 Italian FDI in China amounted to 473 million euro, just a small drop in the pool of FDI in the country, which in the same year amounted to 101 billion US dollars.¹⁷ Given the scattered nature of the Italian presence in China, even putting together the sample used in this chapter has been challenging.¹⁸ Surveys aimed at evaluating the labour conditions in Italian factories located on the Chinese mainland are still lacking. For the moment being, the only instance of a critical research about labour conditions in Italian factories in China seems to be the one which has been undertaken by the metal mechanic branch of one of the major Italian union, the Confederazione Italiana Sindacato Lavoratori (CISL). In 2009 they cooperated with a Shenzhen-based organization to realize a survey on labour conditions in sixteen Italian metal mechanic factories in Guangdong province.¹⁹

To obviate to this lack of materials, two surveys were carried out in Shenzhen and Chongqing between May and July 2012, involving 348 workers from six factories in the metal mechanic sector. The three factories in Shenzhen include a large-size manufacturer of semiconductors with about seven thousand employees (sixty-eight questionnaires collected), a middle-size mosquito traps and air conditioner components' manufacturer with about two thousand employees (forty questionnaires collected) and a small factory which mainly produces coffee machines with about two hundred employees (forty questionnaires collected). While the biggest factory is a joint-venture established in the mid-Nineties by the foreign company and a Shenzhen SOEs, the two smaller factories are wholly foreign-owned and were both established in the last decade. The three factories in Chongqing are all joint ventures and include a large-size manufacturer of components, engines, scooters and motorcycles with over

¹⁶ Italian Ministry of Foreign Affairs and Italian Trade Promotion Agency, "Rapporti paese congiunti: Cina, primo semestre 2011" (Joint country reports: China, first semester 2011), <http://www.rapportipaesecongiunti.it/rapporto-congiunto.php?idpaese=121>. Last access, 6 June 2012.

¹⁷ These data do not include the financial sector. For the data on FDI inflows in China in 2010, see UNCTAD, "Global and regional FDI trends in 2010", on http://unctad.org/en/docs/webdiaeia20111_en.pdf. Last access, 6 June 2012. For the data on Italian FDI in China, see National Institute of Statistics and Italian Ministry of Economic Development, "Commercio Estero e Attività Internazionali delle Imprese: Annuario 2010" (Foreign commerce and international activities of the enterprises: 2010 Yearbook), on http://www3.istat.it/dati/catalogo/20110728_00. Last access, 6 June 2012.

¹⁸ The only public databases on the Italian entrepreneurial presence in China is the Italian Chamber of Commerce's Membership Directory which is published every two years and lists the about seven hundred members of the Chamber. The Membership Directory is published directly by the China-Italy Chamber of Commerce. Its last edition (the 12th) covers the years 2010-2011, <http://www.cameraitacina.com/index.php?nav0=94&nav1=116&setlang=1>. Last access, 7 June 2012.

¹⁹ The FIM-CISL survey report is still unpublished, but was made available in its entirety to the author.

twenty thousand employees (one hundred questionnaires collected), a middle-size producer of heavy duty trucks with over two thousand employees (sixty questionnaires collected) and a small-sized diesel engines manufacturer with about eight hundred employees (forty questionnaires collected). For what concerns the workers, the sample is composed by 249 male workers (71,6%) and 99 females (28,4%). Among them, 56 (16,1%) were born before 1980, 132 (37,9%) in the Eighties and 160 (46%) in the Nineties; 14 (4%) had attended elementary school (*xiaoxue*), 147 (42,4%) middle school (*chuzhong*), 75 (21,6%) high school (*gaozhong*), 82 (23,6%) technical school (*dazhuan*), 10 (2,9%) had a bachelor degree (*benke*) and 19 (5,5%) had a technical specialization (*dazhuan zhuanke*).

Workers' expectations towards wages and work hours

The first assumption about young migrant workers which will be tackled in this chapter concerns their unwillingness to “eat bitterness”. The only way to test this is to analyse salaries and work hours. Not considering the various bonuses, workers in Shenzhen and Chongqing respectively earned an actual wage (*shishou gongzi*) of 2.518,24 yuan and 1.908,58 yuan. Aggregating Shenzhen and Chongqing’s data, on average younger workers received higher wages, with those born in the Nineties earning as much as 2.227,68 yuan per month, against the 2.193,02 of those born in the Eighties and the 1.942,27 yuan of those born before 1980. However, this data is not enough to prove whether younger migrant workers have higher expectations towards salaries and labour conditions. When asked what they would have deemed a reasonable (*heli*) wage in a situation in which they had to work forty hours a week without having to do overtime, Shenzhen workers average response was 3.054,42 yuan, 21,28% more than their actual wage and about two times the average base salary guaranteed by the local factories (1.597,52 yuan); Chongqing workers answered 2.626,13 yuan, 37,59% more than their actual wage and 2,5 times the base wage in the local factories (1.185,16 yuan). According to my survey, age does not affect workers' expectation towards salary. In fact, if we analyze the aggregated data for the desired wage by age cohort, workers who were born before 1980 desire 2.841,82 yuan per month, against the 2.787,02 of the workers born in the Eighties and the 2.813,75 yuan of those born in the Nineties. Furthermore, if we consider the proportion between workers' desired wage and the basic wage they receive by age group, we find out that the desired wage for workers in all age cohorts is about two times their basic wage.²⁰ In particular, in Shenzhen the workers who were born before 1980 desired a wage

²⁰ Since the workers were asked to write down their desired wage “in a situation in which they had to work forty

which was 2,14 times their basic wage, against the 1,89 times of the workers born in the Eighties and the 2,09 times of those born in the Nineties; in Chongqing, workers born before 1980 desired a wage 2,14 times higher than their basic wage, against the 2,22 times of the workers born in the Eighties and the 2,32 times of those born in the Nineties. This finding challenges the idea that younger workers have higher expectations for what concerns wages.

According to the Chinese Labour Law, Chinese workers should work for no more than eight hours a day and no more than forty-four hours a week on average (art. 36). The Law also guarantee the right of the employer to prolong work hours due to needs of production, provided that overtime do not exceed three hours a day or thirty-six hours a month (art. 41). Finally, every year Chinese workers are entitled to eleven days of rest for the national holidays, on the basis of a calendar which is defined year by year by the State Council. Accordingly, a Chinese worker should work 250 days a year (365 days - 104 weekend days - 11 national holidays), that is 20,83 days a month (250 days : 12 months), for a total of 202,64 hours a month including overtime (20,83 days x 8 hours + 36 hours of legal overtime). The workers in my survey on average worked 231,64 hours a month, that is 29 hours more than they should have, with no significant differences between Shenzhen (231,49 hours a month) and Chongqing (231,73 hours a month). The important finding in this case is that the younger the workers, the less the hours they work. As displayed in the aggregated data in tables one to three, while the workers born before 1980 on average worked 249,40 hours a month, those born in the Eighties worked 239,83 hours and those born in the Nineties 219,21 hours. This element suggest that younger workers are less willing to work long hours. Yet, the data about the daily work hours during the week paint a slightly different picture, with the pre-1980 workers working 8,82 hours a day, against the 9,11 hours of the workers born in the Eighties and the 8,68 hours a day of those born in the Nineties. This means that even if younger workers are working less hours per month, they are still working longer hours per day, a finding which further challenges the idea that they are less willing to "eat bitterness" (*chiku*).

Actual work hours by city	
	Mean
Shenzhen (N=115)	231,49
Chongqing (N=163)	231,73
Total (N=278)	231,63

Actual work hours by age	
	Mean
Pre-1980 (N=42)	219,21
1980s (N=106)	239,83
1990s (N=130)	249,4

Table 1: Work hours per month (by city and by age)

hours a week without having to do overtime”, it is important to compare their desired wage with the basic wage, which also does not take into account overtime or other bonuses.

Actual vs desired work hours by city			Actual vs desired work hours by age		
	Actual work hours	Desired work hours		Actual work hours	Desired work hours
	Mean	Mean		Mean	Mean
Shenzhen	9,33 (N=143)	9,50 (N=143)	Pre-1980	9,77 (N=55)	8,90 (N=56)
Chongqing	9,52 (N=195)	8,41 (N=195)	1980s	9,62 (N=130)	9,11 (N=127)
Total	9,44 (N=338)	8,87 (N=338)	1990s	9,18 (N=153)	8,68 (N=155)

Table 2: Work hours per day

Other questions included in my survey give us a glimpse of Chinese migrant workers' attitude towards overtime. Anecdotal evidence suggests that Chinese migrant workers are keen to take jobs which involve a lot of overtime. They also appear to be more likely to complain if overtime hours are too few, than if they are too many. For example, in June 2009 the *Nanfang Zhoumo* reported that a student group which had recently exposed the malpractices of a Coca-Cola plant in Tianjin had received a series of phone calls by enraged migrant workers, furious for the fact that the media exposure had led the factory managers to drastically reduce their working hours in order to abide by the law.²¹ And certainly it is no coincidence if, when we consider the labour related petitions in Shenzhen in 2009, we find out that the number of petitions related to excessive work hours is minimal: except for a 4% petitions which were related to the failure of the employer to pay the regular overtime wage, among those data there is no mention of other overtime-related disputes.²² My survey confirms that Chinese workers are willing to do overtime even if it is not necessary. Asked whether in a situation in which their salary was enough to cover their expenses and they had to work only eight hours a day, five days a week, they would still be willing to do overtime?, 70,8% of the workers responded affirmatively. Interestingly, as table four displays, younger workers were more willing to do overtime: while as many as 38,9% of the respondents who were born before 1980 responded negatively, only 22,1% of those born in the Eighties and 31,8% of those born in the Nineties did, a finding which challenges the assumption that younger workers are less willing to work long hours. Yet, when asked how many hours a day they would deem appropriate to work in a situation in which they did not have to worry about their salary (table three), those workers who were born before 1980 answered 8,90 hours,

²¹ He Haining, "Jimo de 'Kele', pengbi de 'anquan mao'", *Nanfang Zhoumo*, 18 giugno 2009, p. A7.

²² 2009 is the last year for which detailed data are available. Dong Wenhong, Guo Yong, "2009 nian Shenzhen shi laodong baozhang xinfang xiankuang fenxi he fazhan qushi" (Analysis of the current situation and the future tendencies of the labour-related petitions in Shenzhen in 2009), in Tang Tingfen (ed.), *Shenzhen Laodong Guanxi Fazhan Baogao 2010*, Shehui Kexue Wenzhai Chubanshe, Beijing 2010, pp. 102-114.

against the 9,11 of those born in the Eighties and the 8,68 of those born in the Nineties. That is, even if workers in each age cohort desired to work fewer hours than they actually did, younger workers desired the shortest work days. Such findings suggest that while most migrant workers – especially the younger ones - are indeed willing to do more overtime than what is necessary to sustain their life expenses, in fact they would still like to work less hours than they actually do. This does not seem to be a generational feature.

Overtime willingness by age		
	Willing	Unwilling
Pre-1980 (N=54)	61,1%	38,9%
1980s (N=131)	77,9%	22,1%
1990s (N=157)	68,2%	31,8%
Total (N=342)	70,8%	29,2%

Table 4: Question: “In a situation in which your salary is enough to cover your expenses and you have to work only eight hours a day, five days a week, would you still be willing to do overtime?”

Knowledge of minimum wages and other labour regulations

The second assumption to be tested is that younger workers are generally more aware of the law and of their rights. In order to assess migrant workers' knowledge of the law, it is important to start from those concrete issues which exert a significant influence on their daily working life, as minimum legal wages. At the time of the survey, the minimum monthly wages in Shenzhen and Chongqing were respectively 1.500 yuan and 1.050 yuan. All the factories paid salaries higher than the legal minimum, but how many of the interviewees did know about this? Asked whether they were aware of the local minimum wage, 61,2% of the workers in Shenzhen answered positively, against only 19,6% of those in Chongqing. But, when those who stated that they did know were asked to write down the specific amount of the minimum wage, 93,3% of the Shenzhen workers was able to give a correct answer, against only 58,1% in Chongqing. Curiously, 10,8% of all the workers who believed to know the minimum legal wage gave a figure which was higher than the actual legal minimum. This means that only 57,14% of the Shenzhen and 11,05% of the Chongqing workers really knew the correct minimum legal wage. This difference between the two cities may be due to workers' different level of exposure to information related to minimum wages and rights in the two areas. What is relevant for the purpose of this chapter is the awareness level for each age group. As displayed in table five, in spite of the fact that knowledge of the minimum wage remains low for every age cohort, younger migrant workers are indeed more aware: while only 10,9% of the workers who were born before 1980 knew the exact minimum wage,

33,3% of those born in the Eighties and 35,2% of those born in the Nineties gave a correct answer.

Knowledge of the minimum monthly wage by age			
	He/she wrote the right amount	He/she wrote the wrong amount	Do not know
Pre-1980 (N=55)	10,90%	10,90%	78,2%
1980s (N=132)	33,3%	3,8%	62,9%
1990s (N=159)	35,2%	7,6%	57,2%
Total (N=346)	30,64%	6,65%	62,72%

Table 5: Knowledge of the monthly minimum wage

Overtime is another important aspect of the life of the Chinese migrant worker. But how many of the surveyed workers were aware of the related regulations? When asked whether they knew about the provisions concerning the monthly overtime limit – which, as we have seen, the Labour Law set at thirty-six hours - only 34,2% of all the respondents stated that they knew about it, against 65,8% who was not aware. If we consider each age cohort, 81,5% of the workers born before 1980, 64,1% of those born in the Eighties and 61,7% of those born in the Nineties said that they did not know. Furthermore, when asked in more detail to write down what they thought to be the correct amount of maximum overtime hours per month, only 62% of those who stated that they knew went on giving a correct figure. As table six displays, if we consider each age cohort, 22,2% of the workers born before 1980, 59,1% of those born in the Eighties and 70,7% of those born in the Nineties stated that they knew and gave a correct figure. These findings all confirm that younger workers are indeed more aware. Instead, when asked whether they knew how to calculate the overtime wage, 53,8% of the workers affirmed to know, with 86,5% of them able to answer a specific open question about the amount of the overtime wage in ordinary work days - that is 1,5 times the normal wage. As can be seen in table seven, 76,5% of the workers born before 1980, 90,9% of those born in the Eighties and 84,8% of those born in the Nineties provided a correct answer. Even in this case, younger workers are more aware.

Knowledge of the overtime limit per month (=36hr)		
	He/she wrote the right amount	He/she wrote the wrong amount
Pre-1980 (N=9)	22,2%	77,8%
1980s (N=44)	59,1%	40,9%
1990s (N=58)	70,7%	29,3%
Total (N=111)	62,2%	37,8%

Table 6: Monthly overtime limit

Overtime wage calculation by age (=1,5*ordinary pay)		
	Right answer	Wrong answer
Pre-1980 (N=17)	76,5%	23,5%
1980s (N=77)	90,9%	9,1%
1990s (N=99)	84,8%	15,2%
Total (N=193)	86,6%	13,4%

Table 7: Overtime wage calculation

Up to now we have only considered individual rights. What about collective rights? How many of the surveyed workers knew about the union? As table eight displays, when asked whether they knew what a trade union is, only 5,6% of the workers stated that they knew (*zhidao*), against 24,3% who said that they had only a vague idea (*zhidao yidiandian*), 61,6% who said that it was not clear (*bu tai qingchu*) and 8,5% who said that they had never heard (*mei tingshuo guo*) the word "union" (*gonghui*) before. Age is not relevant in this case. If we jointly consider the percentages of those who answered that it was not clear to them what a union is and those who had never heard the word "union" by age cohort, we find that they were as much as 70,9% of those who were born before 1980, 66,9% of those born in the Eighties and 72,4% of those born in the Nineties. Looking again at the aggregate data, 24,3% of the workers said that they were union members, but only 17,4% of those who were members stated that they knew what a union was, against 43,% who had just a vague idea and 39,1% who said that it was not clear to them. Finally, when asked whether they knew if in their company there was a union, 42,5% of the workers replied that they did not know – by age cohort, 46,4% of those who were born before 1980, 37,9% of those born in the Eighties and 44,9% of those born in the Nineties. Not having access to the management level, even for the researcher it was almost impossible to understand whether the various companies had established unions or not. For example, in one of the factories in Shenzhen the union had just been established a few weeks before I was granted an interview with the human resources manager. The decision to establish the union had been top-down and had been due to a diktat

coming from the local branch of the ACFTU. Not only the union head was a white collar chosen by the management, but he also was one of the twenty employees out of two thousand with a Shenzhen household registration. In such a context, it is not surprising to discover that 94,5% of the surveyed workers do not know anything about collective bargaining (*jiti xieshang*).

Knowledge of what a trade union is by age				
	Know	Have an idea	Not clear	Never heard
Pre-1980 (N=55)	16,4%	12,7%	56,4%	14,5%
1980s (N=130)	2,3%	30,8%	59,2%	7,7%
1990s (N=156)	4,5%	23,1%	65,4%	7,0%
Total (N=341)	5,6%	24,3%	61,6%	8,5%

Table 8: Knowledge of what a union is by age

Trust towards labour contracts and the legal system

The third assumption to be tested regards workers' attitude towards the status quo. In order to gain a better understanding of this aspect it is important to assess workers' trust towards the legal system. Labour contracts are a key element in the Chinese authorities' propaganda on "harmonious labour relations" (*hexie laodong guanxi*). But how many workers trust the labour contracts as a tool to protect their rights? According to my survey, 99,3% of the workers in Shenzhen and 92,3% of the workers in Chongqing had signed a labour contract with their employers. Before signing, 26,9% of all the workers had read carefully (*zixi yuedu guo*) the contract and its various clauses, 54,5% had just taken a look at it (*suibian kan guo*) and 18,6% had signed without reading (*qianming er yi*). As table nine displays, the younger the workers the more careful they were in reading the labour contract: while only 22,6% of the workers who were born before 1980 had read the contracts in detail, 24,8% and 30,3% of those born in the Eighties and in the Nineties had. At the same time, while as many as 35,9% of those born before 1980s had just signed without reading, 17,8% and 13,1% of those born in the Eighties and Nineties had. Furthermore, as table ten displays, when asked whether they thought that labour contracts could protect their rights and interests, only 19,2% of those who were born before 1980 said that they could, against 28,1% and 28,65% of those who were born in the Eighties and in the Nineties. On the contrary, as many as 17,3% of those who were born before 1980 answered that labour contracts were useless in protecting their rights, against only 3,1% and 2,7% of those who were born in the Eighties and in the Nineties. Finally, as table eleven shows, when asked whether labour contracts were beneficial to the workers or to the employers, 6,2% of the workers affirmed that a contract was beneficial to

the employee, 75,7% affirmed that it was beneficial to both workers and employers, 17,5% that it benefitted the employer and 0,6% that it did not benefit neither of them. If we analyse the data by age cohort, we find out that as many as 34% of those born before 1980 believed that labour contracts were meant to advantage the employers, against only 14,4% and 14,3% of those born in the Eighties and in the Nineties. All these findings are consistent in showing that younger workers are giving more importance to labour contracts and do not see them just as pieces of papers.

Attention in reading the labour contract by age			
	Read carefully	Just had a look	Just signed
Pre-1980 (N=53)	22,6%	41,5%	35,9%
1980s (N=129)	24,8%	57,4%	17,8%
1990s (N=152)	30,3%	56,6%	13,1%
Total (N=346)	30,6%	6,7%	62,7%

Table 9: How did the workers read the labour contract

Can the contract protect your rights?				
	Can	Sufficiently	Cannot	Do not know
Pre-1980 (N=52)	19,2%	36,6%	17,3%	26,9%
1980s (N=128)	28,1%	53,9%	3,1%	14,9%
1990s (N=150)	28,65%	56,0%	2,7%	12,65%
Total (N=330)	27,0%	52,1%	5,2%	15,8%

Table 10: Trust towards the labour contract

Contract beneficiaries				
	Favorable to me	Favorable to the company	Favorable to both	Unfavorable to both
Pre-1980 (N=53)	11,3%	34,0%	54,7%	0,0%
1980s (N=125)	6,4%	14,4%	78,4%	0,8%
1990s (N=147)	4,1%	14,3%	81,0%	0,7%
Total (N=330)	6,2%	17,5%	75,7%	0,6%

Table 11: Who benefits the most from the labour contract?

Another fundamental question which the relevant literature seldom addresses is whether migrant workers trust the law as a tool to protect their rights. As displayed in table twelve, when asked whether they thought the law could protect their rights and interests, 8,8% of the workers replied that it could not (*bu neng*), 28% that maybe it could (*yexu neng*), 58,4% that it should (*yinggai keyi*) and 4,7% that it absolutely could (*wanquan neng*). Such figures display an overwhelming trust toward the law. Furthermore, analysing the data by age

cohorts, we find out that there is no meaningful difference between younger and older workers for what concerns their attitude towards the law: if we jointly consider those who responded that the law "could not" protect their rights and those who said that "maybe it could" (an expression which implies a strong doubt), we find that 39,6% of those workers who were born before 1980, 37,1% and 35,7% of those born in the Eighties and in the Nineties did not trust the law. On the other side, if we jointly consider those who answered that "it should" and "it definitely could", we find as many as 64,3% of those born in the Nineties, 62,9% of those born in the Eighties and 60,4% of those born before 1980.

Trust in the law by age		
	Could not or maybe it could	It should or it definitely could
Pre-1980 (N=53)	39,6%	60,4%
1980s (N=132)	37,1%	62,9%
1990s (N=154)	35,7%	64,3%
Total (N=339)	36,9%	63,1%

Table 12: Trust in the law

But does this trust derives from a direct experience with the legal system? Apparently not. In fact, only 11% of the surveyed workers had resorted to the law to address a dispute and only 8,6% knew someone who had. This means that their perception of the efficiency or inefficiency of the legal system depends on external factors. In fact, when asked to evaluate their sources of legal knowledge in a scale from one to five - with one being the minimum and five the maximum – the surveyed workers implicated that the most relevant actors in shaping their perception of the law are respectively: relatives and friends (with an average score of 1,35), the Internet (1,33), traditional media (0,99), workshop managers (0,88), human resources departments (0,85), labour offices (0,8), the trade union (0,42) and labour NGOs (0,4).

Another question which can give some insight into migrant workers' relationship with the legal system is their perception of the strikes. Asked whether they thought strikes to be legal (*hefa*) or illegal (*weifa*), 36,3% of the workers believed it to be legal, while only 16,8% believed it illegal and 46,9% were unsure. As can be seen in table thirteen, age is irrelevant in determining workers' perception of the lawfulness of the strike: 37% of the workers born before 1980 believed the strike to be legal, slightly less than the 40,6% of the workers born in the Eighties and little more than the 32,% of the workers born in the Nineties. Furthermore, as table fourteen displays, when asked whether they approved of the strikes as a strategy adopted

by individuals or organization in order to protect their rights and interests, 15,1% affirmed to be very supportive (*feichang zancheng*), 30,2% to be supportive (*zancheng*), 14,5% to be rather contrary (*bijiao bu zancheng*) and 9,9% to be totally contrary (*feichang bu zancheng*). Younger workers looked with far more favour to the idea of resorting to strike than their older counterparts: if we consider those who were "very supportive" and "supportive" together, we can see that while only 22% of those workers who were born before 1980 approved of the strikes, 59% of those born in the Eighties and 75% of those born in the Nineties did. Does this mean that younger workers are more rebellious? Not necessarily. The fact that just a tiny minority of the interviewees thought that strikes are illegal and so many approved the strike as a way to protect their rights suggests that most of the workers trust the State to be on their side in the event of a strike, as long as it is reasonable. Therefore, this willingness to go on strike should not be read as the proof of a growing class consciousness or political awareness by the younger workers.

Perception of the Lawfulness of the Strikes (by Age)			
	Legal	Illegal	Cannot say
Pre-1980 (N=54)	37,0%	16,7%	46,3%
1980s (N=128)	40,6%	14,1%	45,3%
1990s (N=157)	32,5%	19,1%	48,4%
Total (N=346)	36,3%	16,8%	46,9%

Table 13: Lawfulness of the strikes

Approval for Strike by Age					
	Approve completely	Approve	Cannot say	Disapprove	Disapprove completely
Pre-1980 (N=55)	13,9%	33,5%	27,2%	15,2%	10,2%
1980s (N=131)	16,8%	28,3%	32,8%	14,5%	7,6%
1990s (N=158)	14,5%	25,5%	32,7%	12,7%	14,6%
Total (N=344)	15,1%	30,2%	30,2%	14,5%	9,8%

Table 14: Approval for strikes

Conclusions

The data presented in this chapter paint a much more nuanced and contradictory portrait of the new generation of migrant workers than the current narrative, challenging some of the main assumptions which have been circulating in recent years. For what concerns the issue of the younger workers' unwillingness to "eat bitterness", this survey yielded mixed results. While, on one side, workers born in the Eighties and in the Nineties have been

confirmed to earn higher salaries - a fact which suggest that they are less willing to accept low end jobs - on the other they do not seem to have higher expectations towards their wages. In fact, when asked to write down the amount of a "reasonable" salary in a situation in which they had to work forty hours a week without overtime, workers in all age cohorts were surprisingly homogeneous in their answer, stating that their desired wage was about two times the basic wage which their factories were guaranteeing them at the time. This finding suggests that the generational shift between older and younger migrant workers for what concerns the salaries has been much overstated. A similar conclusion can be drawn from the data on overtime. While younger workers in the survey indeed were working less hours per month than their older counterparts, they were still having longer work days, a finding which once again challenges the idea that they are less willing to "eat bitterness" (*chiku*). This finding was further confirmed by the fact that, when asked whether they would have been willing to work overtime in a situation where they did not have to worry about their salary, the younger the workers the more they were likely to respond positively. Even if younger workers' desired work hours per day were slightly lower, in fact their unwillingness to work hard appeared to be overrated.

Nevertheless, the most interesting findings are in the realms of the knowledge of the law and of the trust towards the legal institutions. As we have seen in this chapter, only 57,14% of the Shenzhen and 11,05% of the Chongqing workers knew the correct amount of the local minimum legal wage; no more than 34,2% of all the workers stated that they knew about the monthly overtime limit of thirty-six hours, with only 62% of them who were then able to provide an exact figure; only 53,8% of the workers affirmed to know the correct way to calculate overtime wage in ordinary work days, with 86,5% of them able to answer a specific open question about the amount; just 61,6% of the workers said that they had just a vague idea of what a union is and 8,5% even stated that they had never heard the word "union" before; 94,5% of the workers did not know anything about collective bargaining (*jiti xieshang*) and almost nobody had ever heard about the Honda strike.

While the data analysed by age cohort confirm the assumption that younger workers are more aware than older ones, in fact these very data also prove that this awareness remains very low, even for what concerns the most elementary aspects of the Chinese labour legislation, as wages, work hours and the union. Yet, what is remarkable is the fact that this ignorance of the provisions of the law is accompanied by an attitude of trust towards the law itself. In spite of significant skeptical minorities, most of the workers were confident in the ability of the labour contracts to protect their rights and interests. Furthermore, when asked

whether they thought the law could protect their rights and interests, only 8,8% of the workers replied that it could not. As many as 36,3% of them even believed that going on strike was a right granted by the Chinese legislation.

Such findings suggest that Chinese migrant workers do not know much about the law, but at the same time trust it as an instrument to protect their rights. To reverse Mary Gallagher's theorization, we could say that this reflects an attitude of "misinformed enchantment" towards the law, a situation in which workers are not aware of the specific provisions of the labour legislation - not even for what concerns their most immediate interests - but believe in its thaumaturgical powers. While on one side - as seen in the first chapter - such attitude may play in favour of the Chinese authorities by guaranteeing their paramount goal of social stability and eventually even boosting their legitimacy, on the other it can become a dangerous source of social tension, especially in the event that the high expectations of the workers are not matched by facts. As we have seen, significantly, only a very tiny minority of the surveyed workers declared to have had any direct experience with the legal system or to know someone who had. In fact, their knowledge of the legal system was entirely mediated by other actors: the media, the union, the labour offices or even simple hearsay. Therefore, whenever this trust is tried and the legal system do not live up to expectations, workers are more likely to feel frustrated and disgruntled. Higher expectations are likely to lead to greater disappointment. It is in this process that the "misinformed enchantment" finally gives way to the "informed disenchantment" described by Mary Gallagher, in a chain of events which in the end produces a class of citizens who know very well the provisions of the law and the limitations of the legal system. This gap between the *perception* and the *experience* of the law will be dealt in the next chapter.

5.

From the Discourse to the Experience of the Law: Chinese Workers and Their Quest for Justice

At the end of December 2007, the Standing Committee of the National People's Congress passed the Law on Mediation and Arbitration of Labour Disputes (*laodong zhengyi tiaojie zhongcaifa*), the first organic law of the PRC which regulates in detail the procedure of labour disputes resolution.²³ Consistently with the Labour Law and other previous regulations, the new Law maintains a four steps procedure, articulated in mediation, arbitration and two levels of trial. At the same time it also introduces some innovations favourable to the workers, from the extension of the period in which it is possible to file for arbitration, to the definition of a series of disputes for which arbitration is the final level of judgement; from the abolition of arbitration fees, to the sharing of the burden of proof between workers and employers; from the introduction of a temporal limit of sixty days for the arbitration award, to the clarification about the competent body according to the place where the labour contract is implemented.²⁴

This new Law follows a decade of exponential growth in the number of labour disputes in China. According to Chinese official statistical yearbooks, in the fifteen years

²³ For the integral text of the Law see *Zuixin Laodong Falü Zhengce Quanshu* (Complete collection of labour related laws and policies), Third Edition, Zhongguo Falü Chubanshe, Beijing 2011, pp. 703-708.

²⁴ Linda Liang, "New developments in the mediation and arbitration of labor disputes in China", *China Law Insight*, 3 August 2011, <http://www.chinalawinsight.com/2011/08/articles/corporate/labor-employment/new-developments-in-the-mediation-and-arbitration-of-labor-disputes-in-china>. Last access, 15 August 2011.

between the passage of the Labour Law and 2009, labour controversies settled by arbitration committees and courts rose from 48.121 to more than 684.400.²⁵ Although this explosion is generally interpreted as the sign of a growing activism and awareness among the ranks of Chinese workers, such a view may be far too naive. As Ethan Michelson observed, "data on arbitration and court cases tell us only about the numerator but nothing about the denominator. A proper evaluation of the rights of workers and the resolution of labor disputes requires considering the number of aggrieved workers from which these full-blown disputes are selected."²⁶

As a matter of fact, the available data do not allow us to understand what part of the total number of labour disputes goes through arbitration and trial and what part is simply shelved by workers who do not have any knowledge about the law or do not trust it as an instrument for the resolution of conflicts. According to the data which I collected in the survey described in the previous chapter, when workers encounter a problem on the workplace, their favourite methods of resolution are talking with the managers (47,7%), leaving the workplace giving up their rights (23,85%), enduring (19,83%), seeking help from the labour office (3,73%), seeking help from the union (1,72%), going on strike (1,41%), getting the media involved (0,29%) and suing the employer (0,29%). In other words in today's China, where the legal institutions are still in a phase of fluid development, when they incur in labour disputes, most workers still choose to "vote with their feet" (*yijiao toupiao*), preferring to switch job and give up their rights rather than facing a legal system they are not familiar with. Furthermore, the fact that most migrant workers have just a middle school education and have never gone through any kind of legal training opens a series of questions about their attitude towards the legal system, in particular for what regards their access to justice.²⁷

²⁵ Before the enforcement of the Labour Law, labour disputes generally were settled by mediation within the labour unit. Chinese authorities created the arbitration system just in 1987, after almost a decade of reforms. Initially reserved to the disputes inside the State Owned Enterprises, the possibility to resort to arbitration was extended to all kind of enterprises in 1993, a policy which was confirmed one year later in the new Labour Law. About the development of Chinese labour dispute resolution system see Jie Shen, *Labour Disputes and Their Resolution in China*, Chandos, Oxford 2007. The 48.121 disputes refer to 1996, the first year for which there are available data. For the 2009 data see Qiao Jian, "2010 nian Zhongguo zhigong zhuangkuang" (The situation of Chinese workers in 2010), in Ru Xin, Lu Xueyi, Li Peilin (eds.), *2011 Nian Zhongguo Shehui Xingshi Fenxi yu Yuce*, Shehui Kexue Wenzhai Chubanshe, Beijing 2011, pp. 245-260.

²⁶ Ethan Michelson, "The practice of law as an obstacle to justice: Chinese lawyers at work", *Law and Society Review*, vol. 40 n. 1, 2006, pp. 1-38.

²⁷ According to a survey carried out by the National Bureau of Statistics in 2009, 1,1% migrant workers was illiterate; 10,6% had an elementary school diploma; 64,8% had a junior middle school diploma; 13,1% had a high school diploma; 10,4% had a vocational school diploma (*zhongzhuan*). Anyway, the educational level continued to grow, with 1,7% more migrants who received a high school or university education than the previous year. Even more significant was the fact that 31,1% of the migrant workers aged between 21 and 25 had received a high school or university education. Guojia Tongjiju Nongcunsi, "2009 nian nongmingong jiance diaocha baogao" (Survey report on migrant workers in 2009),

Going beyond the rhetoric of the law, this chapter aims at assessing the practice of migrant workers' access to justice. In the first part, on the basis of the existing literature and a series of interviews with workers, labour NGOs activists and lawyers, it will describe the various actors a Chinese worker can seek help from in his quest for justice. I will distinguish among two categories of actors: on one side, "institutional actors", that is State or para-State actors specifically in charge of defusing labour conflicts; on the other side, a series of "unofficial actors" who, for economic or social reasons (or both), offer legal services to the workers. Among the institutional actors, I will list labour offices, the official trade union, legal aid centres and letters and visits offices; among the unofficial actors, I will focus on law firms, civil representatives (*gongmin daili*), labour NGOs and the media.

In the second part, this chapter will delve into the reality of collective actions in Chinese factories, underlining how they represent the most evident signal of the limits of the Chinese legal system in addressing labour conflicts. In particular, I will describe the juridical context that, with its ambiguity, allows these strikes to happen, highlighting how Chinese workers mobilization today is still driven by economic reason and, usually, do not challenge the official discourse of the law. In doing this, I will underline how the strikes in the end can become functional to the political aims of the ruling Party, paradoxically contributing to the perpetuation of the *status quo*.

Institutional actors

As already pointed out in the third chapter, Chinese citizens trust institutions that are closely associated with the State to a far greater extent than non-bureaucratic actors.²⁸ Therefore, it is not surprising that most of the workers in my survey, when asked about what they would do in the event of a labour dispute, responded that their first choice after seeking their managers, leaving the factory and enduring would be the local labour office (*laodongju*, or *laodongban*)²⁹ The labour office usually operates on two administrative levels, city and district, plus an additional layer of "labour stations" (*laodongzhan*) in charge of the biggest industrial areas. At the city level, it is organized in two departments: the labour branch (*laodong fenju*) and the labour and employment service centre (*laodong jiuyue fuwu zhongxin*).

http://www.stats.gov.cn/tjfx/fxbg/t20100319_402628281.htm. Last access, 16 August 2011.

²⁸ Pierre F. Landry, "The diffusion of legal institutions in China", in Wu Guoguang e Helen Lansdowne (eds), *Socialist China, Capitalist China: Social Tension and Political Adaptation under Economic Globalization*, Routledge, London 2009, pp. 138-168.

²⁹ About the structure of the Chinese labour offices see the entry *Laodongju* on *Baidu Baike*, <http://baike.baidu.com/view/470859.htm>. Last access, 13 March 2011.

If the latter's main functions include workers' employment and re-employment, labour branches shoulder the responsibilities of mediating industrial relations, resolve labour controversies, manage labour related mass incidents and petitions.

Nevertheless, according to the interviews with migrant workers which I carried out in Shenzhen in 2011, these offices appear to be structurally unable to carry out their duties. Not only they do not have enough manpower, but they also lack the autonomy necessary to go after those same enterprises which, with their taxes, contribute to much part of the local revenue. Being part of the local government, they have a stake in safeguarding the investments in the area under their administration, so they often end up sitting on the side of the employers. The only variable which eventually alters the rules of the game is a consequence of the authorities' emphasis on the maintaining of social stability (*weiwen*): since every "mass incident" (*quntixing shijian*) directly impacts the career prospects of the local officials, the labour offices need to prevent or resolve swiftly any conflict before it degenerates.³⁰ This detachment between the imperative of economic growth and the emphasis on social stability, a reflection of the divisions among higher and lower levels of the Party-State, opens some manoeuvring space for disgruntled workers.³¹

In theory, labour officials should have some leverage in dealing with employers but, in absence of collective actions or other disruptive forms of mobilization on the workers' side, they often choose to ignore the problem and send the aggrieved workers back to the factories to discuss directly with the management by themselves. A migrant worker employed by a Shenzhen labour NGO described his experience with a labour office in three terms:

When I went to press charges, I thought that some officials in the labour office would have gone straight to the factory to check the situation out. I would have never thought that they would have just called the owner of the factory to tell him that I had gone over to press charges. They asked him whether the factory was in order and he obviously denied that there was any problem at all, then they sent me back to my workplace to discuss with him by myself. At the time I thought that this way of handling the situation was weird: they wanted me to discuss with my

³⁰ For the official definition of "mass incident" see Ye Duchu, Lu Xianfu (eds.), *Dang de Jianshe Cidian* (Dictionary of the building of the party), Beijing, Zhonggong Zhongyang Dangxiao Chubanshe, 2009, pp. 398-399; Cai Yongshun, "Disruptive collective action in the reform era", in Kevin O'Brien (ed.), *Popular Protest in China*, Cambridge, Harvard University Press, 2008, pp. 163-178; Yu Jianrong, "Dangqian woguo quntixing shijian de leixing yu tezheng" (Categories and features of mass incidents in today's China), *Zhongguo Zhengfa Daxue Xuebao*, n. 6/2009, pp. 114-120.

³¹ This manipulation of the detachment between the official discourse of the Law and the policies implemented by local authorities is particularly plain in the collective actions by both laid-off workers and migrant workers. Cai Yongshun, *State and Laid-Off Workers in Reform China: The Silence and Collective Action of the Retrenched*, Routledge, London 2006; Ching Kwan Lee, *Against the Law: Labor Protests in China's Rustbelt and Sunbelt*, University of California Press, Berkeley 2007.

boss by myself!³²

A second institutional actor which according to its mission should help workers in their quest for justice is the official union, the All-China Federation of Trade Unions (ACFTU). As already explained in the second chapter, although the action can count on a structure which reaches every administrative level and despite the fact that at the end 2011 it boasted more than 258.851.000 members, 37,3% of them migrant workers, the official union remains very weak when it comes to representing the interests of migrant workers.³³ This is due to its fundamental lack of independence, both at the local level, where it depends from the Party-State, and at company level, where it totally depends from the employer. Not only the Party-State maintains a firm grip on the appointment of the union leadership at all levels, but the grassroots unions usually depend on the contributions of the employers, who according to the Trade Union Law, have to devote the 2% of the total payroll to union expenses. In such a context, the trade union unavoidably ends up occupying a marginal position in the realm of industrial relations and at the company level it is even common for the role of president to be performed by white collars, if not even the company director himself.

The union is largely irrelevant for migrant workers. As we have seen in the previous chapter, most workers do not have a clear idea of what a trade union is and a substantial minority does not even know what the word “union” means. This is unavoidable if we consider that in the event of strikes and collective actions, the union is structurally impaired not only to take the lead, but also to sit on the side of the workers. On the contrary, the company and local unions often have to play the role of the "fireman", acting as a middleman between the workers and the management in order to restore the production as soon as possible.³⁴ In such a situation, it is not surprising that the official union has put a lot of emphasis on the issue of legal mobilization. As Chen Feng wrote in 2003: "Unions are pressing hard in workers' legal cases, representing them on arbitration committees or in court, provoking public discourse on the labor rights issue, and promoting pro-labor legislation. Although the unions' active legal role cannot significantly change labor's weak position in an emerging market economy, it constitutes part of a labor struggle in China despite the country's entrenched one-party rule that precludes autonomous, independently organized labor

³² Interview, Shenzhen, 30 December 2010.

³³ Zhonghua Quanguo Zonggonghui Yanjiushi, "2011 nian gonghui zuzhi he gonghui gongzuo fazhan zhuangkuang tongji gongbao" (Statistical report on the development of the trade union work and organization in 2011), 1 May 2012, available online on <http://stats.acftu.org/template/10002/file.jsp?aid=217>. Last access, 11 October 2012.

³⁴ Chen Feng, "Between the State and labour: The conflict of Chinese trade unions' double identity in market reform", *The China Quarterly*, n.176, December 2003, pp. 1006-1028; Chen Feng, "Trade unions and the quadripartite interactions in strike settlement in China", *The China Quarterly*, n. 201, March 2010, pp. 104-124.

movements."³⁵

The first Trade Union Legal Aid Centre was established in 1997 by the Shanghai city Federation of Trade Unions and by April 2008, 6.178 Trade Union Legal Aid Centre had been established nationwide.³⁶ The main duties of these centres are to provide workers in labour disputes with free legal services, including consultation, mediation and representation in labour arbitration committees and courts. Nevertheless, as Liu Mingwei, Li Chunyun and Kim Sunghoon have pointed out, these centres are impaired to carry out their mission for at least three reasons: first, they do not have sufficient capacity to help a large number of workers; second, legal mobilization is essentially reactive, since it involves correcting the infringements of rights already stipulated by laws rather than pursuing new rights claims; third, when workers' interests conflict with those of the government the centres are basically unable to represent the workers.³⁷ According to Chen Feng, the lack of fundings and qualified personnel lead these centres to accept only cases "where evidence of employers' wrongdoing is clear and indisputable and that are perceived to be 'grave' and 'representative'."³⁸ The same issues were noticed by Mary Gallagher, who pointed out that out of 473.943 labour disputes that went to arbitration from 2000 to 2002, trade union legal aid assisted workers only 0,8% of the time.³⁹

Trade Union Legal Aid Centres are just a small part of a wider network of legal aid centres (*falü yuanzhu zhongxin*) established by the State. The Ministry of Justice started developing its own legal aid system in 1994, on the wake of a series of tragedies which highlighted the lack of access to justice on the part of the disadvantages social groups.⁴⁰ In 2009, in China there were 3.274 functioning legal aid centres, manned by 13.081 legal professionals, among which 10.337 (79%) were qualified lawyers.⁴¹ Originally the legal aid system did not include migrant workers among its target, but things changed after 2006, when

³⁵ Chen Feng, "Legal mobilization by trade unions: The case of Shanghai", *The China Journal*, n. 52, July 2004, pp. 27-45.

³⁶ ACFTU, "Gonghui falü gongzuo de huihuang wunian" (Five glorious years of work in the legal field for the trade union", *Zhongguo Gongyun*, n. 4/2008, pp. 16-18.

³⁷ Liu Mingwei, Li Chunyun and Kim Sunghoon, "Chinese trade unions in transition: a three-level analysis", in Sheldon Peter, Kim Sunghoon, Li Yiqiong, Warner Malcom (eds.), *China's Changing Workplace: Dynamism, diversity and disparity*, Routledge, New York 2011, pp. 277-300.

³⁸ Chen Feng, "Legal mobilization by trade unions".

³⁹ Mary Gallagher, "Hope for protection and hopeless choices': Labor legal aid in the Prc", in Elizabeth Perry, Merle Goldman (eds.), *Grassroots Political Reform in Contemporary China*, Harvard University Press, Cambridge Massachussettes 2007, pp. 196-227.

⁴⁰ Fu Hualing, "Access to justice and constitutionalism in China", in Stéphanie Balme and Michael Dowdle (eds.), *Building Constitutionalism in China*, Palgrave Macmillan, New York, 2009, pp. 164-178.

⁴¹ "Quanguo falü yuanzhu tongji shuju ji fenxi" (Data and analysis of the national statistics on legal aid in 2009), in Ministry of Justice Legal Aid Centre, *Zhongguo Falü Yuanzhu Nianjian 2009*, Zhongguo Minzhu Fazhi Chubanshe, Beijing, 2010, pp. 183-192.

the State Council gave specific instructions to improve legal aid services aimed at migrant workers.⁴² According to official data, in 2009 legal aid centres nationwide handled 234,849 cases involving migrant workers, 30,208 of them in Guangdong province alone.⁴³ Yet, in spite of the fact that China's legal aid system has the unique ability to impose legal aid duties on private legal practitioners - the so-called "social lawyers" - with only a small subsidy or even no remuneration at all, State-run legal aid centres suffer from the same structural limits of the centres run by the trade union: lack of financial resources, lack of qualified personnel, an excessive social demand.⁴⁴

The last institutional actors which a worker can seek in the event of a problem on the workplace are the letters and visits bureaus (*xinfangban*), a network of offices which reaches the administrative and political hierarchy down to the county level.⁴⁵ These particular institutions, whose main duty is receiving and handling citizens' complaints, were created in the early Fifties to work under the aegis of the various administrative and political departments at all levels, including the various People's Congresses, Party seats and trade unions. As Isabelle Thireau and Hua Linshan pointed out, while the Arbitration committees apply a "test of justice" based largely on points of legality, the letters and visits offices deal with more generalized appeals about "injustice", as subjectively perceived by the citizens, therefore they are more likely to become a worker's last resort after all other avenues of redress have failed.⁴⁶

According to official data, in 2008 Shenzhen letters and visits offices received 123,326 complaints, involving 356,699 people.⁴⁷ Among them, 1,021 were major collective petitions, involving 102,042 people. More than 83% of the petitions were addressed to the offices attached to the city Labour and Social Security Bureau and the Labour Offices in the districts

⁴² State Council, *Guowuyuan guanyu jie jue nongmingong wenti de ruogan yijian* (State Council's opinions about the solution of migrant workers' problems), Zhongguo Fazhi Chubanshe, Beijing 2006; Ministry of Justice, "Sifabu guanyu renzhen xuexi guan che 'Guowuyuan guanyu jie jue nongmingong wenti de ruogan yijian' de tongzhi" (Notice of the Ministry of Justice on conscientiously studying and implementing the "State Council's opinions about the solution of migrant workers' problems"), in Ministry of Justice Legal Aid Centre, *Zhongguo Falü Yuanzhu Nianjian 2006*, Zhongguo Minzhu Fazhi Chubanshe, Beijing, 2007, pp. 230-232.

⁴³ "Quanguo falü yuanzhu tongji shuju ji fenxi" (Data and analysis of the national statistics on legal aid in 2009), in Ministry of Justice Legal Aid Centre, *Zhongguo Falü Yuanzhu Nianjian*, cit.; "Guangdongsheng falü yuanzhu gongzuo gaikuang" (Situation of the legal aid work in Guangdong province), in Ministry of Justice Legal Aid Centre, *Zhongguo Falü Yuanzhu Nianjian*, cit., pp. 183-192.

⁴⁴ Fu Hualing, "Access to justice and constitutionalism in China", cit.

⁴⁵ Laura Luehrmann, "Facing citizen complaints in China, 1951-1996", *Asian Survey*, vol. 43 n. 5 (2003), pp. 845-866.

⁴⁶ Isabelle Thireau and Hua Linshan, "The moral universe of aggrieved Chinese workers: workers' appeals to arbitration committees and letter and visits offices", *The China Journal*, n. 5, July 2003, pp. 83-103.

⁴⁷ Dong Wenhong, Guo Yong, "2008 nian Shenzhenshi laodong baozhang xinfang xiankuang fenxi yu 2009 nian fazhan qushi" (Analysis of the situation of labour-related petitions in Shenzhen in 2008 and future trends for 2009), in Tang Tingfen (ed.), *Shenzhen Laodong Guanxi Fazhan Baogao*, Shehui Kexue Wenzhai Chubanshe, Beijing 2009, pp. 186-199.

of Bao'an and Futian and 79% of the cases happened in the manufacturing industry. The main causes of dissatisfaction were: compensations for dismissal and embezzlement of wages (26%), wage arrears (23%), unpaid overtime salaries (7%), disputes related to labour contracts (6%), collection of a deposit (3%), salaries lower than the legal minimum (1%), failure in carrying out employment formalities (1%), frauds related to the labour dispatch system (0%). Another hint of the relevance of the petitions for Chinese workers can be found in the fact that in April 2011 the Shenzhen Bureau of Housing and Urban-Rural Development issued a policy, which virtually prohibited migrant workers from protesting unfair treatment, threatening to bring criminal charges against those who organized collective protests or petitions from May to September that year.⁴⁸

The effectiveness of the petitions is heatedly debated, but even in this case the prevalent opinion is that this channel is basically useless.⁴⁹ In 2004, on the wake of a particularly negative report by the Chinese Academy of Social Sciences which concluded that just 2% of the petitions obtained any kind of redress, various Chinese scholars went as far as to put forward the idea that this system should have been completely abolished.⁵⁰ In December 2009 the *Zhongguo Qingnianbao* reported the story of a retired letters and visits director who, after retirement, had started petitioning the local government for the inadequacy of the compensation for the forced demolition of his house. He reportedly told to the journalists: "I did this job for so many years and I know that petitions are of little use."⁵¹

Unofficial actors

Should the institutional channels prove to be ineffective, the workers with means can seek assistance from a professional lawyer. Yet, even in this case the likelihood to get any help is very low, since Chinese lawyers usually screen their cases on the basis of profitability

⁴⁸ Shenzhen Bureau of Housing and Urban-Rural Development, "Dayun qijian Shenzhen nongmingong quanti shangfang jiang zhui xingze" (During the Universiades migrant workers' collective petitions will be criminally prosecuted) 27 April 2011, <http://news.sina.com.cn/c/2011-05-07/155122423180.shtml>. Last access, 26 June 2011. Due to the strong reaction of the public opinion, the ban was removed in early May.

⁴⁹ Yu Jianrong, "Zhongguo xinfang zhidu pipan" (A critic of the letters and visits system in China), *Zhongguo Gaike*, n.2/2005, pp. 26-28. See also Carl Minzner, "Xinfang: An alternative to the formal Chinese judicial system", *Stanford Journal of International Law*, n. 42/2006, pp. 103-179; Chen Xi, "Collective petitioning and institutional conversion", in Kevin J. O'Brien (ed.), *Popular Protest in China*, Harvard University Press, Cambridge 2008, pp. 54-70.

⁵⁰ According to this report, only 2% of the petitions eventually led to the solution of the problem, see Zhao Ling, "Guonei shoufen xinfang baogao huo gaoceng zhongshi" (First report on letters and visits attracts attention from the higher levels), *Nanfang Zhoumo*, 4 November 2004, p. 4.

⁵¹ Bao Limin, "Tuixiu xinfangban zhuren shangfang ji" (Petition diary of the former director of a letters and visits office), *Zhongguo Qingnianbao*, 10 December 2009, available on http://zqb.cyol.com/content/2009-12/09/content_2974196.htm. Last access, 26 June 2011.

and economic incentives.⁵² Labour disputes are generally unprofitable: besides his fee – which in Shenzhen in 2010 went from three to five thousand yuan – the lawyer does not have the possibility to get other commissions. From the lawyers' point of view, labour cases not only require a great commitment in terms of time, but also tend to become a bother, because emotionally involved workers usually call them continuously to get updates. As a Shenzhen labour NGO employee who previously worked in a law firm told me:

[I decided to come to work in a labour NGO] because when I was an apprentice in the law firm and I happened to come upon labour controversies, nobody would accept them. When a worker came looking for our help, the lawyers never accepted the case and every time they sent me to refuse. For this reason, I was very unhappy: [those workers] really needed help and often did not have any alternative. They came looking for us and not a single lawyer was willing to accept their cases. Even when the workers were willing to pay, they did not accept.⁵³

Even if this is true for the great majority of the lawyers employed by Chinese private law firms, some law professionals do not take into consideration the profitability of a dispute when screening the cases they wish to accept. In particular, the so-called "public interest lawyers" (*gongyi lüshi*) and "rights-protection lawyers" (*weiquan lüshi*) are well-known for dealing with cases which are usually rejected by other lawyers on the basis of their scarce profitability or political sensitivity.⁵⁴ Nevertheless, when it comes to accept or refuse a client, even these lawyers have an established set of priorities. Even if they may not be concerned with the economic side of a dispute, for lack of time and resources they still have to choose. Most of them decide to focus on issues which could easily draw attention from the media and push the boundaries of the debate on the rule of law in China. Unfortunately, "ordinary" cases as wage arrears and excessive overtime are too common to have any appeal for the press or to raise any debate about legal issues, so they are often declined.

Some Chinese lawyers have been able to conjugate the commercial aspect of their business with a more "humanitarian" call. On one side, there are a few legal firms specialized in labour disputes resolution on the behalf of the workers, as the Shenzhen based Laowei legal firm (*Guangdong Laowei Lüshi Shiwusuo*); on the other, some lawyers have built their own career on representing workers, especially those who are involved in cases of labour related

⁵² Ethan Michelson, *cit.*

⁵³ Interview, Shenzhen, 11 January 2011.

⁵⁴ On rights-protection lawyers see Fu Hualing and Richard Cullen, "Climbing the Weiquan Ladder: A Radicalizing Process for Rights-Protection Lawyers", *The China Quarterly*, n. 205/2011, pp. 40-59; Fu Hualing, "Challenging Authoritarianism through Law: Potentials and Limits", *National Taiwan University Law Review*, vol. 6 n.1, 2011, pp. 339-365; Eva Pils, "Asking the Tiger for his Skin: Rights Activism in China", *Fordham International Law Journal*, n. 30 2007, pp. 1209-87.

injuries.⁵⁵ While further researches are necessary in order to assess the financial sustainability of legal firms like Laowei, lawyers who work in the field of labour related injuries definitely handle a very profitable business. This kind of lawyers usually ask the workers to sign an agreement which binds the latter to pay their legal representative a certain percentage of any eventual compensation, generally about 15-30%, but sometimes considerably higher. The profitability of this sector is particularly plain if we consider the case of Zhou Litai, a lawyer who in the Nineties pioneered this kind of business. After years of praises from the Chinese and international media, in 2004 he was brought down from his pedestal because he had sued some of his former clients who had fled without paying his fees. According to an article published on the *China Daily*, in June 2004 Zhou had accumulated five million yuan of overdue legal fees from 161 different clients.⁵⁶

Those workers who cannot afford to pay a professional lawyer or are unable to obtain help from a right-protection lawyer can still seek help from a "citizen representative" (*gongmin daili*). According to the art. 58 of the Civil Procedure Law (*minshi susong fa*), "a party to an action, or statutory agent may appoint one or two persons to act as his agents ad litem. A lawyer, a near relative of the party, a person recommended by a relevant social organization or a unit to which the party belongs or any other citizen approved by the people's court may be appointed as the party's agent ad litem."⁵⁷ Such a vague legal definition has opened the way to the emergence of a host of "barefoot lawyers" (*chijiao lüshi*), a term which usually designates people who are not lawyers, but have a certain familiarity with law and offer their services as legal representative for a fee.⁵⁸

Many citizen representatives specialized in labour controversies are workers who in the past have personally experienced a labour dispute. From the point of view of a migrant worker, resorting to a *gongmin daili* presents a few advantages: not only it is cheaper than hiring a professional lawyer, but it also allows the worker to have a representative who is specialized in labour disputes and, supposedly, more active in collecting evidence on the behalf of their clients. Even more important from a migrant workers' perspective is the fact that a *gongmin daili* is personally closer, since he often is fellow countryman (*laoxiang*).

⁵⁵ On Laowei see Wang Jing, "Laogong de lüshi" (Labour lawyers), *Caixin*, 29 January 2012, online on <http://magazine.caixin.com/2012-01-29/100351123.html>. Last access, 17 April 2012.

⁵⁶ Yao Ying, "Legal 'savior' fighting for his fees", *China Daily*, 5 July 2004, available online on http://www.chinadaily.com.cn/english/doc/2004-07/05/content_345478.htm. Last access, 26 June 2011.

⁵⁷ For the Civil Procedure Law of the People's Republic of China see <http://www.china.org.cn/english/government/207339.htm>. Last access, 17 April 2012.

⁵⁸ While there is no available literature on the phenomenon of *gongmin daili* in the labour field, something has been written about their role in rural conflicts, see Xing Ying, "Barefoot lawyers and rural conflicts", in You-tien Hsing and Ching Kwan Lee, *Reclaiming Chinese Society*, Routledge, London and New York 2010, pp. 64-82.

However, since *gongmin daili*'s competence and reliability cannot be taken for granted, those workers who seek their help do it at a considerable personal risk. It should be noted that *gongmin daili* themselves do not have an easy life, from both the political and financial point of view. Not only some local governments, Shenzhen included, have started looking at them as troublemakers, always ready to instigate strikes and protests, but they also can barely make ends meet.⁵⁹ According to Duan Yi, founder of the Laowei legal firm, after a few months of service, thirty out of sixty *gongmin daili* – 90% of them former workers – who in 2008 were formally affiliated with his firm, after a while decided to earn their living representing employers against their employees.⁶⁰

Labour NGOs are another option for migrant workers who seek justice from the legal system but cannot afford professional lawyers and do not trust *gongmin daili*. These labour groups, whose features have already been outlined in the third chapter, usually offer legal counselling to migrant workers, with some of them going as far as to represent workers in arbitration and in court, covering their legal expenses. In order to impress the public and the donors, some of these organisations inflate the data about the cases they deal with, so it is impossible to assess their real impact on Chinese society. Nevertheless, although only a tiny minority of workers are aware of their existence and despite all the other structural constraints which restrain their activities, these labour NGOs often prove to be the only actor willing to help migrant workers in their quest for justice.

When everything else fails, before adopting extreme measures, the workers can resort to one last actor: the media. Even if this is not a proper channel for legal redress, the Chinese press and the Internet often play a fundamental role in helping migrant workers getting attention from the relevant bodies. Yet, even if all the main local and national media in China have hot-lines for the public, Chinese journalists cannot avoid being extremely selective in their coverage.⁶¹ Since Chinese newspapers and magazines, while retaining their ties with the State, are increasingly commercial entities, they can hardly focus on ordinary stories which involve labour rights' violations.

⁵⁹ Zhang Junqin, "'Gongmin dailiren' de shishi feifei" (Scandals of the "citizen representatives"), *Liaowang*, 30 October 2007, http://news.xinhuanet.com/legal/2007-10/30/content_6973228.htm. Last access, 16 August 2011. For the debate which took place in Shenzhen in 2009 see Liu Chunlin, He Yi, "Dujie 'heilushi' yao ganyu sheka" (To prevent 'black lawyers' it is necessary to have the courage to put some restrictions), *Nanfang Dushibao*, 12 February 2009, http://epaper.oeeee.com/H/html/2009-02/12/content_701324.htm. Last access, 16 August 2011.

⁶⁰ Interview, Shenzhen, 26 June 2012.

⁶¹ On the relationship between the media and the administration of justice in China see Benjamin L. Liebman, "Changing Media, Changing Courts", in Susan L. Shirk (ed.), *Changing Media, Changing China*, Oxford University Press, New York 2011, pp. 150-174; Benjamin Liebman, "The media and the courts: Towards competitive supervision?", *China Quarterly*, n. 208, December 2011, pp. 833-850.

In the past decade, the Internet seems to have opened new possibilities for migrant workers seeking justice. On one side, new media have proved to be an effective organizational tool, contributing more than once to workers' mobilisations and strikes, the most successful example being the Uniden strike in 2004.⁶² On the other, blogs, BBS and social networks have opened new spaces where workers can share their stories with the public, in the hope that an outpour of public sympathy will bring to the resolution of their grievances.⁶³ Cases with serious economic implications - as labour related injuries and occupational diseases - often go on for years and usually incur in any kind of bureaucratic obstructions. Now, facing this kind of situation, tech-savvy workers can choose to seek help from the web.

This was the case of Zhang Haichao, a migrant worker from Henan who in 2009 had his chest opened up so samples of his lungs could be tested. This unnecessary surgery was his last resort after his claims that he suffered of pneumoconiosis, an occupational illness, had been systematically rejected by the doctors of the hospital which should have certified his health condition.⁶⁴ Since his former employer had withheld the documents on the sanitary conditions in the abrasion proof material company he had worked for and since the doctors had forged his medical tests, for more than two years Zhang had not received a single yuan of compensation. It was just after the story of his surgery was investigated by some websites that the national media reported it and his employer accepted to pay a compensation of 615.000 yuan. In the process, six local health officials were dismissed from their jobs.

Despite this positive outcome, Zhang Haichao's story demonstrates how complicated it is for a worker to get the media involved in a labour dispute, however dramatic it is. In fact, even if various media had reported his story since the beginning, without the tragic decision of undergoing an unnecessary surgery nobody would have ever heard about his situation. As Zhang told me in 2010:

I had contacted the media. At the time it seemed pointless to go on with the petition and everything else, so I tried to seek help from the media, calling them repeatedly. However, even after my story got published in February 2009, there was no follow-up, there were no results.

The TV station *Fazhi Pindao* repeatedly reported my story, but it was useless, there was no

⁶² On the Uniden strike and its significance, see Jack Linchuan Qiu, *Working-Class Network Society*, The MIT Press, Cambridge 2009, pp. 193-195.

⁶³ For a couple of examples of blogs opened by workers affected by occupational diseases see Wang Fengping, *Lu zai hefang* (Where is the path?), http://blog.163.com/mayi_ant1962; or Hu Xurong's *Zhiyebing Weiquan Doushi de Boke* (Blog of a fighter for the rights of occupational diseases' victims), <http://zybwqds.blog.163.com>. In both cases the last access was on 28 June 2011.

⁶⁴ For a chronicle of Zhang Haichao's case, see the entry on the "open chest incident" (*kaixiong shijian*) on *Baidu Baike*, <http://baike.baidu.com/view/2630005.htm>. Last access, 28 June 2011.

reaction. Even if the news was out and everybody knew about it, my former employer did not want to settle the situation and nobody could do anything.⁶⁵

Another worker who had been struggling for years to get her employers to recognize the occupational nature of a disease contracted in the workplace told me that "getting the attention of the media is like winning a lottery."⁶⁶ Asked if she trusted more the law or the Internet as a tool to address a labour dispute, she replied:

I think that the law is holier and more trustworthy. But in the past few years I have realized that even if believing in the law is right, until today I haven't seen any justice. On the contrary, the Internet has helped me a lot, in very concrete ways, for example through those friends who supported me on the web, both psychologically and materially, with small things as advices on how to treat my illness, which drugs to buy, exchanges of experiences, some donation.⁶⁷

After the system fails: an overview of Chinese workers' collective actions

When all the institutional and non-institutional channels fail them, migrant workers are left with just a couple of choices: walking away giving up their rights or adopting more extreme measures, as going on strike. As we have seen in the second chapter, strikes and protests have always been common in China and, contrarily to what is commonly believed, are generally accepted by the authorities unavoidable. Although various cases of clashes between the State and the workers on strike have been reported by the media, local governments rarely resort to violence in dealing with this kind of social phenomena, often preferring to adopt a more conciliatory approach for the sake of their political legitimacy.⁶⁸

Strikes and protests are an important component of the narrative of contemporary China, both in China and abroad. In fact, the idea that the Chinese society is a giant "social volcano" is a common occurrence in debates among China watchers, with its supporters often quoting official data to prove their argument. Even if in recent years the Chinese authorities stopped providing figures for "mass incidents" (*quntixing shijian*) – the official jargon for collective protests- , we know that official sources counted more than ninety thousands cases of unrest in 2006 alone, up from only 8.700 cases in 1993, with a study on partial data for

⁶⁵ Interview, Shenzhen, 1 May 2010.

⁶⁶ Interview, Shenzhen, 11 December 2010.

⁶⁷ Interview, Shenzhen, 11 December 2010.

⁶⁸ Cai Yongshun, *Collective Resistance in China: Why Popular Protests Succeed or Fail*, Stanford University Press, Stanford, 2010.

2005 highlighting the fact that 60% of that year's protests involved more than 500 people.⁶⁹ This increase in civic activism comes as no surprise. Many studies have been devoted to the shifting dynamics of grassroots mobilization in China and many other have dissected the reasons behind citizen discontent in China. All are unanimous in stating that in spite of all economic development, unrest is growing in China. For example, a national survey coordinated by Martin King Whyte in 2004 – significantly published under the title *The Myth of Social Volcano* – showed that in spite of the fact that at the time a majority of Chinese citizens believed to live in a "fair" society, in China there are substantially unsatisfied minorities.⁷⁰

Disgruntled workers play a fundamental role in mass incidents. According to a study of the Chinese Academy of Social Sciences, in 2003 alone Chinese authorities had to deal with 58.000 mass incidents which involved more than three million people.⁷¹ On that occasion, workers and pensioners were the most relevant social group, for a total of about 1.660.000 people, 46,9% of the participants. Yet, contrarily to what these figures imply, labour protests are far from monolithical in their organisational features and goals. Not only mobilizations in companies of different kind of ownership follow different patterns, but also strikes launched by different social groups vary considerably from each other.

In fact, there is a considerable literature which tries to rationalize these phenomena with the Chinese context, elaborating analytical frameworks useful in making sense of Chinese protests. A premise which is commonly accepted is that, as Ching Kwan Lee argued, "the differences in worker struggles are shaped by the diverse modes of State regulation of labour and the systems of social provision outside of waged work."⁷² This led various scholars to the adoption of different theoretical frameworks for different industrial contexts. In particular, Ching Kwan Lee identified two different mobilization patterns among Chinese workers: on one side, "protests of desperation", launched by laid-off State workers (*xiagang*) who feel betrayed by the State and excluded by the labour market and often use mass action as a means of political bargain; on the other, "protests against discrimination" by migrant workers, whose demands center mostly on wage non-payment and working conditions and

⁶⁹ Wang Weilan, "Making sense of 'mass incidents'", *The Global Times*, 30 May 2009, <http://special.globaltimes.cn/2009-05/433271.html>. Last access, 20 April 2012. The study is Chung Jae-Ho, Hongyi Lai, Ming Xia, "Mounting challenges to governance in China: Surveying collective protestors, religious sects and criminal organizations", *The China Journal*, n.56 July 2006, pp. 1-31.

⁷⁰ Martin King Whyte, *Myth of the Social Volcano*, Stanford University Press, Stanford 2010.

⁷¹ Qiao Jian, Jiang Ying, "Shichanghua guochengzhong de laodong zhengyi he laodong quntixing shijian fenxi" (An analysis of labour disputes and labour related mass incidents in the process of transition to market), in Ru Xin, Lu Xueyi, Li Peilin (eds.), *2005 nian Zhongguo shehui xingshi fenxi yu yuce*, Beijing, Shehui Kexue Wenzhai Chubanshe, 2004, pp. 296-314.

⁷² Ching Kwan Lee, *Against the Law*, University of California Press, Berkeley and Los Angeles, 2007, p.12.

whose preferred method of struggle is legal mobilization.⁷³

Others have focussed only on laid-off workers. In particular, William Hurst pointed out three different frames which influence their patterns of mobilization: first of all, an official frame, widely accepted among the workers in booming market cities of the central coast, that emphasizes that workers could be worse off than they are, that blames individual mismanagement and petty corruption for problems in particular firms, that sees finding a job to be the responsibility of each individual, and that recognizes the benefits of reforms; a second frame, which resonates particularly well in north-eastern China and which could be called "Maoist moral economy", that blames entire post-1978 reform project for ruining a basically healthy socialist order; finally, a third frame, which mixes elements of the previous can be found in the upper Changjiang and north central regions.⁷⁴

As we have already noted in the fourth chapter, in the past couple of years much has been written about a supposed increase in workplace activism in China, a discourse which has often been linked to the rise of a new generation of migrant workers. Yet, the basis of this discourse is frail. For example, in his recent book, Chris Chan offers an interesting overview of the strikes in Shenzhen from 1986 to 2004, arguing that strikes have been increasing in these two decades, but as Anita Chan and Kaxton Siu pointed out, in his analysis he has not taken into account the strike density, the proportion of strikes to workforce.⁷⁵ The same holds true for the supposed "wave" of strikes of the Spring 2010: despite the fact that semi-official sources have availed the idea that a peak in workers mobilizations has actually taken place in that period, no hard evidence has been provided to support such claims.⁷⁶

The only certainty for what concerns the reality of the strikes in today's China is in the legislative field. No matter the social group involved or the organizational pattern followed, behind all the episodes of labour unrest stands one of the most significant grey areas in the Chinese legislation, that is the legal void surrounding the issue of the right to strike

⁷³ Ibid.

⁷⁴ William Hurst, "Mass frames and workers protests", in Kevin O'Brien (ed.), *Popular Protest in China*, Harvard University Press, 2008, pp. 71-87.

⁷⁵ Chris Chi Chan, *The Challenge of Labour in China: Strikes and Changing Labour Regime in Global Factories*, Routledge, London and New York, 2010; Anita Chan and Kaxton Siu, "Chinese migrant workers: Factors constraining the emergence of class consciousness", in Beatriz Carrillo and David Goodman (eds.), *Workers and Peasants in the Transformation of Urban China*, Edward Elgar, London, 2012, forthcoming.

⁷⁶ Qiao Jian, "The situation of Chinese workers in 2010", cit. Qiao, a specialist from the Chinese Institute for Labour Relations, the think tank of the official Chinese union, emphasized how recent workers' protest showed four distinctive features, which he called "four concentrations" (*si ge jizhong*): in first place, the strikes are spatially centred on the Pearl River Delta; in second place, they are centred on foreign enterprises, especially in the electronic sector; in third place they are centred where the labour force is mainly composed by young migrants; finally, they focus on economic and material requests.

(*bagongquan*). In the previous chapter we have seen that Chinese workers do not know whether strikes are legal or illegal in China, with many of them believing that going on strike is perfectly lawful. It may be surprising, but even Chinese scholars cannot agree on this issue. For instance, in June 2010, on the wake of the Nanhai Honda strike, the magazine *Nanfengchuang* published an op-ed by Yu Jianrong, a prominent scholar from the Chinese Academy of Social Sciences specialized in mass incidents.⁷⁷ The title was surprisingly frank: "If the workers do not have the right to strike, they are not respected" (*zhigong meiyou bagongquan jiu meiyou zunyan*). This article was followed by other equally critical pieces about the ACFTU's crisis of representativeness and even appeals for a reinforcement of workers' organizations in China.⁷⁸ Yet, the title of Yu's op-ed was misleading, since it assumed that in China there is no right to strike. As a matter of fact, as other scholars have pointed out, the Chinese legislation does not mention the right to strike, but it does not deny it either. In particular, while the Chinese Constitutions adopted in 1975 and 1978 explicitly recognized this right, when it came to pass the new Constitution in the early Eighties the legislators decided to expunge it from the chart, a decision which was probably influenced by the Polish crisis, with the rise of the Solidarity Union, an event which at the time was widely reported by the Chinese media.⁷⁹ Since then, the government has been keeping an ambiguous attitude toward the right to strike, alternating apparent openings to real closures.

While the Labour Law and the other labour regulations adopted in the Nineties did not even mention the issue, in the last decade a few steps forward towards the explicit recognition of the right to strike have been made. In 2001 the National People's Congress ratified the International Covenant on Economic, Social and Cultural Rights, which binds the States Parties to the pact to ensure the right to strike, provided that it is exercised in conformity with the laws of the particular country. Some Chinese scholars believe that, in the present legal void, such ratification is enough to sanction the legality of the right to strike in China, even in absence of other relevant laws and regulations.⁸⁰ The 2001 amendment of the Trade Union Law has been another step forward, with the revised article 25 which specifies that in the event of a "labour stoppage" (*tinggong*) – an euphemism commonly used in the Chinese legal jargon to indicate the strikes - the trade union is expected to hold consultations with the employers,

⁷⁷ Yu Jianrong, "Zhigong meiyou bagongquan jiu meiyou zunyan" (If the workers do not have the right to strike, they are not respected), *Nanfengchuang*, n. 13, 16 July 2010, pp. 36-38.

⁷⁸ See for example the interview with Li Yonghai, former ACFTU leader. See Zhang Jianfeng, "Huhuan yi ge qiang gonghui" (Calling for a stronger union), *Nanfengchuang*, n. 13, 16 July 2010, pp. 39-42.

⁷⁹ About the impact of the events in Poland in China in the Eighties, see Jeanne Wilson, "The Polish lesson: China and Poland 1980-1990", *Studies in Comparative Communism*, vol. 23 n. 3-4, Autumn/Winter 1990, pp. 259-279.

⁸⁰ Chang Kai, "Bagongquan lifa wenti de ruogan sikao" (Some thoughts about the issue of the legislation on the right to strike in China), *Xuehai*, 2005 n. 4, pp. 43-55.

presenting the opinions and demands of the workers and putting forward proposals for solutions.⁸¹ Finally, another opening can be found in the 2003 Law on work safety, where it is recognized the right of Chinese workers to refuse to follow the orders of the employers and abandon the workplace in case of occupational hazards.

Conclusions

Despite all the official emphasis on the rule of law, the limitations of the institutional and non-institutional channels which in theory should enable Chinese workers to pursue their quest for justice end up undermining these workers' ability to redress their grievances. Experiencing such a systemic failure, Chinese workers often do not have any other choice than leaving their workplace empty-handed or going on strike. Yet, as explained in the fourth chapter, they do not perceive the strike as an extreme measure nor as an action with political connotation which could eventually incur in the wrath of the authorities. From their point of view, going on strike is just one in a series of strategies aimed at attracting the attention of the authorities and seeking their help in redressing a perceived injustice.

In today's China, going on strike may not be *legal*, but for sure it is perceived as *legitimate*. As we have seen in the first chapter, decades of rhetoric - at first based on the *zhurenweng*, the idea that the workers were the masters of the State, then on the rule of law and on the principle of "using the law as a weapon" - have imbued Chinese workers with a strong feeling of entitlement, a feeling which materializes itself in frequent protests and mobilizations. Nevertheless, such workplace activism should not be read as a sign of political awareness or growing class consciousness among Chinese workers. As the Party recognized in 1957, when it admitted the workers' right to rebel in front of the official abuses, strikes do not necessarily implicate a refusal of the social and political order. On the contrary, as Teresa Wright recently underlined, sometimes popular mobilizations can be useful in reinforcing the legitimacy of the Chinese leadership.⁸²

Ultimately, despite the fact that labour unrest can to some extent be manipulated by the authorities, it remains a signal of the limits of the legal discourse promoted by the authorities. Strikes, as well as more extreme gestures of resistance as self-mutilation and suicides, highlight the distance between an official narrative which promotes the law as a

⁸¹ Wang Quanxing e Wang Min, "Gonghuifa 2001 nian xiugai de chenggong yu buzu" (The successes and the failures of the 2001 amendment to the Trade Union Law), *Huadong Falü Pinglun*, 2002 n.1, pp. 114-138.

⁸² Teresa Wright, *Accepting Authoritarianism*, Stanford University Press, Stanford California, 2010.

weapon in the hands of the workers and a grim reality where an aggrieved worker is basically alone in his quest for justice. Under these circumstances, the law becomes a double-edged sword for the authorities: on one side, in theory, if it succeeds, it helps them in their efforts to preserve social stability, establishing a framework for industrial relations acceptable to both the workers and the employers; on the other, if it fails, it sharpens the feeling of betrayal and abandonment experienced by the workers, undermining their trust in the institutions and pushing them to a more disenchanting attitude toward State and society. The consequences of this disenchantment still remain to be seen.

6.

Beyond the Realm of the Law: The Scandal of the Black Brick Kilns as a Case Study

In the late Spring of 2007, the Chinese web witnessed an explosion of popular outrage in the wake of the exposure of a series of stories of human trafficking and slavery in the so-called "black brick kilns" (*heizhuanyao*). Since the end of May, when a local TV station in Henan province had aired the first images of young men forced to work in dreadful conditions in some kilns located in the countryside of the Shanxi province, for weeks the Chinese Internet and the press reported stories of kids kidnapped and sold as slaves, of parents desperately looking for their missing children, of horrific human and labour conditions. On that occasion, while self-organized groups of citizens were scouring the countryside looking for illegal kilns, the central authorities launched a series of police operations, followed by a campaign aimed at "sweeping" the ranks of the local bureaucracy. The kilns ended up becoming one of the most debated topics in China in 2007.¹

The brick kilns scandal is an important case study in order to understand the nature of the discourse on labour and rights in today's China. Through an analysis of the articles published by the Chinese media between 2007 and 2011 and a series of interviews with people directly involved in the events, mainly activists, former slaves and parents of missing

¹ Zhu Huaxin, Hu Jiangchun and Sun Wentao, "2007 nian Zhongguo hulianwang yuqing fenxi baogao" (Analysis on Internet-based Public Opinion in China, 2007), 5 February 2008, http://news.xinhuanet.com/newmedia/2008-02/05/content_7565553.htm. Last access, 6 March 2012.

children, this chapter will highlight the limits of the official narrative of the law in China. In particular, it will be argued that, despite the fact that Chinese authorities are promoting an universal and all-encompassing idea of the law, this discourse remains extremely weak when it comes to contexts that are socially and geographically marginal, as the kilns. At the same time -in line with the argument put forward in the first chapter -, it will be argued that the promotion of this discourse has a strong political connotation, with the idea of the law being twisted by the elites in order to maintain the status quo. In such a context, analysing the dynamics behind the black brick kilns is essential to understand the reasons why, despite all the official emphasis on the rule of law, realities totally estranged from the law are everywhere to be seen in China, even today. In fact, even if the kilns are an extreme case, such dynamics help shedding new lights on more “ordinary” situations, as the notorious sweatshops which are still everywhere to be seen in the landscape of the world factory.

This chapter is structured in three parts. In the first part, I will describe the events that eventually led to the explosion of the scandal in 2007, highlighting the important role played by the media and the Internet. In the second part, I will describe the reality of the kilns, underlining how these places are real "microcosms" regulated by rules totally unrelated to the discourse of the Law promoted by the State and explaining how they fit into a wider social context which is still governed by particular logics of power and interest. Finally, I will describe the way the Chinese authorities rode the wave of the scandal to reinforce their political legitimacy.

Salvation by the media

Slavery and forced labour in the kilns are nothing new, as attested by the fact that similar stories can be found both in dynastical histories and chronicles from the Republican era.² Even in the reform era there is no lack of accounts about the kilns: as the then vice-Director of the Shanxi Public Security Bureau publicly acknowledged during a press conference in June 2007, the slavery in the kilns has been known to the Chinese authorities at least since the Nineties.³ As a matter of fact, although before 2007 few people, if any, had noticed the extent and the ramifications of this "forgotten archipelago", Chinese media had

² Chen Jianli, "Wu Si: Heiyao shijian yu diba zhixu" (Wu Si: The case of the black kilns and the local tyrants system), *Nandu Zhoukan*, n. 132, 29 June 2007, pp. A08-A09.

³ Duan Hongqing and Wang Heyan, "Heizhuanyao shijian zhong de yulun liliang" (The strenght and the impotence of the public opinion in the black brick kilns scandal), *Caijing*, n. 189, 9 July 2007, <http://www.caijing.com.cn/2007-07-02/100023681.html>. Last access, 8 March 2012.

been regularly reporting about the kilns for years. The only difference was that before 2007, every piece of news regarding this topic was treated as a specific case, nothing more than an exception in the most reassuring discourse of "civilization" (*wenming*) promoted by the officialdom, not as the symptom of a widespread social problem.

Emblematic in this sense is the story of Zhang Xubo, the only kiln victim whose vicissitudes have been widely reported by Chinese media before 2007.⁴ In 2002, right after graduating from a rural middle school, Zhang went to Xi'an to look for a job, but was deceived by a stranger and sold as a slave in a kiln in the township of Kaolao, Shanxi. For three months, he had to toil for more than sixteen hours a day in the increasing cold weather of Shanxi's Autumn, suffering repeated beatings by the guards. In November, when his legs were suffering from frostbite and he had almost lost his ability to work, he begged the kiln owner to let him go. The owner accepted and even offered himself to give Zhang a lift, but then he left him halfway through, in open countryside. Unable to move, Zhang spent several days in an abandoned kiln nearby with temperatures often lower than zero degrees, before being rescued by a local. Because of the frostbite, both his feet had to be amputated. Even if, back in 2003, this story had caused a great stir on the Chinese media back, to such an extent that Prime Minister Wen Jiabao had issued instructions⁵ to launch a thorough investigation on the matter, no large scale police operation was launched against the kilns nor there was any upsurge of popular fury. Only at the end of August 2009, Zhang Xubo received a compensation of 380.000 yuan, paid by the local governments of Yongji city and Chang'an District in Xi'an. Until that moment, to survive he had to beg on the streets of Xi'an.⁶

Things turned out differently in 2007. The chain of events which eventually led to the explosion of the kilns scandal in March that year was triggered by a woman, Yang Aizhi, whose sixteen years old child had just gone missing in Zhengzhou.⁷ After covering the city with leaflets, Yang was contacted by another parent who told her the story of his two sons,

⁴ Wei Min and Li Mei, "Chang'an Shaonian Duanjiao An Yongji Tingshen Muji" (A witness account of the trial for the case of the young boy from Chang'an whose feet had to be amputated), *Xi'an Wanbao*, 8 April 2004, p. 6.

⁵ Cheng Quanbo, "Sheng falü yuanzhu zhongxin yuanzhu Chang'an duanjiao shaonian Zhang Xubo de qianqian houhou" (Behind the assistance offered to Zhang Xubo by the provincial legal aid center), *Shaanxi Wanbao*, 23 December 2003, http://www.sxdaily.com.cn/data/fzxw/02/20031223_8840656_1.htm. Last access, 26 December 2012

⁶ In April 2004 the owner of kiln where Zhang had been forced to work was sentenced to three years in prison and to pay 495.000 yuan as compensation, money that he never paid. Only at the end of August 2009, Zhang Xubo received a compensation of 380.000 yuan, paid by the local governments of Yongji city and Chang'an District in Xi'an. Until that moment, in order to survive he had to beg on the streets of Xi'an. Liu Jie, "Duanjiao shaonian Zhang Xubo an peichang daowei" (The compensation for the case of Zhang Xubo, the kid whose feet were amputated, has arrived), *Huanghe Chenbao*, 31 August 2009, p. 2.

⁷ Zhu Hongjun "Shaonian xuelei pujiu heigong zhilu" (The tears of blood of young boys pave the road to black labour), *Nanfang Zhoumo*, 14 June 2007, <http://www.infzm.com/content/1422>. Last access, 5 March 2012.

who had been able to escape from some kilns in Shanxi province, where they were being held as slaves. Convinced that her son had to be in a similar place, Yang immediately left for Shanxi, where she allegedly visited no less than one hundred kilns, finding that many of those places were manned by young kids, some of them still wearing their school uniforms.⁸ After going back to Henan, through the missing persons' announcements published on the pages of *Dahebao*, a local newspaper, she was able to get in touch with five other parents in the same situation. This was the beginning of the "League for the Search of the Children" (*xunzi lianmeng*), as the Chinese media named them. In a couple of months, these parents rescued from slavery more than forty kids, then, realizing that this task far outweighed their strength, they decided to seek help from the media. As it turned out, their stories were deemed so difficult to believe that only one journalist, Fu Zhenzhong of the *City Channel* (*dushi pindao*), a Henan local TV station, accepted to follow them in their search and record all the events.

The families of the missing children often tell stories of abandonment and desperation and complain about the indifference of the local authorities. Wang Xiaoli, the mother of a boy who went missing in 2006, told me: "When I went to the police to report that my son was missing, they declined even to open the case. They said that such situations are too common to be taken into consideration."⁹ At the moment of his disappearance, her seventeen-year-old son was studying for the *gaokao*, the university admission exam. He was one of the best students in his school and had a really good chance to get into Qinghua, one of the best universities in the country, a remarkable achievement for a boy from a backward area in Henan countryside. Yet, on 26 October 2006, every trace of him was lost: he was supposed to spend some days at a friend's house, but somehow he went missing before reaching his destination.

Wang's story is far from exceptional. From that day in 2006, her whole family had been looking for the missing boy, but they did not have any luck. Any news, any small trace - it did not matter how vague it was - was something to hold on to, but months later they were still groping in the dark. A turning point came only on the evening of 19 May 2007, when the footage that Fu Zhenzhong had collected during his first trip in Shanxi was aired by the *City Channel*. In those images, shot with a hidden camera, young boys wearing rags could be seen doing heavy works as slaves in some kilns in Shanxi. As soon as she saw those images on

⁸ Ibid.

⁹ Interview with Li Xiaoli, Xinxiang, 17 May 2008. There are other media account of the indifference and impotence og local public security officials in such cases, see for example John Vause, "Parents seek answers after children abducted", CNN, 10 August 2009, http://www.cnn.com/2009/WORLD/asiapcf/08/10/china.stolen.children/index.html?eref=rss_latest. Last access, 10 March 2012.

television, Wang Xiaoli rushed to the TV station in Zhengzhou.

She was not the only one to seek help from the journalists of the *City Channel*. As Fu Zhenzhong subsequently recalled, "in the three days after the airing of the feature about the kilns, about one thousand parents came to the TV station looking for help."¹⁰ Fathers and mothers that until that moment had not known where to look for their children, on that day discovered the existence of the kilns and realized that they were not the only ones whose sons were missing. It was then that these parents started organizing themselves in small teams to scour the Shanxi countryside. Then, on 6 June, the aunt of a kid recently rescued by the "League" published a post on the *Great River Net (dahewang)*, a local web portal in Henan province. This post, which denounced the plight of those parents, not only caused an uproar among the netizens – by 18 June it had received more than 300.000 hits - but also attracted the attention of the national media.¹¹ At the same time, on 7 June, the *Shanxi Wanbao* exposed a tragic story of slavery and murder in a kiln in the village of Caoshengcun, Hongdong county, further fuelling the public outrage.¹² From that moment on, the "black brick kilns" became a term of common use in the Chinese public debate.

What had changed from 2003, when Zhang Xubo's story was soon forgotten, to 2007, when the story of the kilns raised a storm which went on for months? Arguably, one of the main reasons behind different treatment of the scandal in 2007 was the growing role and diffusion of the Internet in China. If in July 2002 in China there were just 45,8 million Internet users, at the end of 2006 this number had risen to more than 139 million.¹³ Not only the Internet has played a fundamental role in spreading the information about the kilns - it has been reported that at the beginning of July online there were 8.320 journalistic articles related to the kilns and more than 6.920.000 pages on the topic - but the web has also been a fundamental actor in bringing the scandal to the attention of the national media and the general public, not to mention its role in sustaining the following citizens' solidarity campaigns.¹⁴ Unsurprisingly, in the last few years the black brick kilns scandal has become

¹⁰ Fu Zhenzhong, "Wo qinshou jiekai Shanxi heizhuanyao de neimu" (I revealed with my own hands the inside story of the black brick kilns in Shanxi), *Xinshengdai Diaocha*, 6 November 2007, <http://china.rednet.cn/c/2007/11/06/1365267.htm>. Last access, 8 March 2012.

¹¹ Zhu Hongjun, "Shanxi heizhuanyao fengbao bei ta dianran le" (The storm on the black brick kilns in Shanxi was started by her), *Nanfang Zhoumo*, 27 July 2007, p. B11.

¹² On 27 May 2007 the local police rescued thirty-one slaves from this kiln. Through their testimony, it was found that another mentally disabled worker had been beaten nearly to death and then buried alive. Li Tingzhen, "Heiyaochang li tamen guozhe 'nugong' shenghuo" (In the black kiln they live as slaves), *Shanxi Wanbao*, 7 June 2007, <http://www.daynews.com.cn/zthj/xwzt/gzshzzy/224665.html>. Last access, 8 March 2012.

¹³ China Internet Information Centre (CNNIC), "Statistical reports on the Internet development in China", <http://www.cnnic.cn/>. Last access, 8 March 2012.

¹⁴ For these data see Duan Hongqing and Wang Heyan, cit. About these solidarity campaigns see IamV's afterword to my book, *Cronache dalle fornaci cinesi* (Chronicles from the Chinese kilns), Cafoscarina, Venezia,

one of the main strong points for the supporters of the discourse of the power of the Internet in China.¹⁵

The hidden rules behind the kilns

The slaves in the kilns were not only teenagers kidnapped from their families, deceived with the pretext of a well-paid job or simply overcome with force, but also mentally disabled adults, strong and obedient manpower who never asked for a wage. Furthermore, many accounts tell the story of children used as slaves. On *Nanfang Zhoumo*, Zhu Hongjun wrote an account of what he had witnessed in a village in Shanxi:

Even if it was already past noon in the more than sixty brick and tiles kilns which followed one another endlessly at the entrance of the village of Liuwu there was no sign of a break for lunch. The children, one meter thirty or forty tall, still displaying the innocence of childhood, could be found in every kiln: the journalist alone saw more than twenty of them.

Most of these children were busy with the production of green tiles. The journalist picked up the cylindrical tool that they were holding in their hands and found out that it weighed about seven or eight *jin*. They were using it once every thirty seconds, a thousand times a day in total.

The children were on the defensive in front of a stranger and, when asked about their age, they replied that they were seventeen or eighteen and then scattered away. One boy secretly told the journalist that he was fourteen, came from Yunnan and had not received any salary since February.¹⁶

Some of the survivors of the kilns tell stories of denied individuality. Among them Hao Dingpo, a fifteen years old boy who was kidnapped in March 2005 in the suburbs of Zhengzhou and then spent two years and a half in the kilns. According to his mother's account, when in the Summer of 2007 he finally managed to escape, his hair was long to the waist and he had a number written on his wrist, two hundred and three.¹⁷ According to his testimony, all the workers in the kiln had to wear the same ragged uniform and nobody knew each other's name: since everyone was identified only by a number. They had a daily production quota of ten thousands bricks and, whenever this task was not performed, they were savagely beaten. When someone tried to run away and was caught, the guards beat them

2009.

¹⁵ For example, Yang Guobin quotes the kilns scandal as a "story of struggles against oppression" in the introduction to his *The Power of the Internet in China: Citizen Activism Online*, Columbia University Press, New York, 2009.

¹⁶ Zhu Hongjun, "Shanxi Wanrong: Tonggong xianxiang 'sihui furan'?" (Wanrong in Shanxi province: the phenomenon of child labour rise again?), *Nanfang Zhoumo*, 21 June 2007, p. A3.

¹⁷ Interview, Zhengzhou, 16 May 2008.

to death and then left their body in the open to rot as a warning. Hao Dingpo allegedly saw six people dying this way.

The conditions in the kilns have a dramatic impact not only on the physical health of the young slaves, but also on their psychological well-being. One year after the police had rescued his son from the kiln in Caoshengcun, Zhang Shanlin was worried because his boy, who once had been lively and cheerful, had lost any interest for anything, including his dream, to become a chef.¹⁸ Several months after being rescued from slavery, he still refused to leave his house and avoid any relationship with other boys his age. He was ashamed about what had happened to him. He kept dreaming about his life in the kiln and woke up screaming almost every night.¹⁹

The regime of the kilns can exist only because many people benefit from it. On *Nanfang Zhoumo*, the journalist Chen Jiang quoted to a former Caoshengcun slave saying: "[The life in the kiln] was like the food chain in the animal realm. [...] This chain had six rings: the owner of the kiln > the *baogongtou*²⁰ > the guards > the older workers > the new workers > the retards."²¹ If the owner is always a local person and the *baogontou* generally comes from somewhere else (usually the place where he finds his "employees"), the guards deserve a more nuanced approach. According to various accounts, it appears that in many kilns it is custom to promote the slaves to guards as a prize for their loyalty.²² Emblematic is the case of Liu Dongsheng, a boy from Guizhou province. Sold for the first time along with his mother to an unmarried man in a Henan village when he was eleven, Liu arrived in the Caoshengcun kiln as a slave when he was less than eighteen years old. Distinguishing himself for his readiness to expose his companions' escape plans, he was soon promoted to guard and put in charge of supervising and beating the other prisoners.²³ In the kilns, the border between victims and tormentors is so ephemeral that in the trial which took place in 2007, Liu Dongsheng was sentenced to two years in prison with the charge of "illegal custody" (*feifa jujin zui*), exactly as any other guard.²⁴

In such a context, there is no space for any discourse of law or rights. Every kiln is a

¹⁸ Interview with Zhang Shanlin, Gongyi, 15 May 2008.

¹⁹ Interview with Zhang Shanlin's son, Gongyi, 15 May 2008.

²⁰ A *baogongtou* is a subcontractor who undertake all the matters related to the management of the workers in a certain company (recruitment, board, lodging, distribution of bonuses and salaries, etc.).

²¹ Chen Jiang, "Heiyao nugong zuihou yi zhan" (The last stop for the slaves of the black kiln), *Nandu Zhoukan*, n. 138, 20 July 2007, pp. A16-A28.

²² Being a guard is a privileged position in the microcosm of the kilns. One of the parents that I interviewed stated that he hoped that his missing son had been promoted to guard, that way would not have suffered.

²³ Chen Jiang, cit.

²⁴ "Hongdong 'Heizhuanyao' Zhufan bei Pan Sixing" (The prime culprit of the Hongdong black brick kiln has been sentenced to death), *Renmin Ribao*, 18 July 2007, p. 5.

microcosm on its own, governed by rules determined by the authority of the owner. Yet, these kilns still have to fit into wider social clusters, in villages and urban suburbs, within the sight of those local authorities that in theory should oversee that the discourse of law promoted by higher authorities is implemented. How to explain this paradox? In order to make sense of the persistence of the black kilns in the Chinese political context, Wu Si developed the concept of the "local tyrants system" (*diba zhixu*), a term which indicates local dominions governed according to "hidden rules" (*qian guize*).²⁵ Wu Si in particular underlines the fact that, in the current Chinese political system, the only deterrent to the complicity of the local officials in covering for the black kilns is the risk of running into the wrath of the upper levels. There is no supervision from below, not in the form of independent unions, nor in the form of democratic elections, a situation that favours the emergence of these self-centered local power systems, accountable to nothing else than themselves.

In fact, the relationship between the black kilns and the local communities is very important. Although many accounts describe the geographical seclusion of these places, as if they were parallel worlds visible from outside but inaccessible, local people are usually well aware of the existence of these realities. The reason why they accept their existence is that the economy of the kilns has its advantages for the local communities, since it stimulates local development, creates new opportunities to get rich and eventually even contributes to the enlargement of the cultivable land, as Wang Dongji, former Party secretary of Caoshengcun and father of the owner of the notorious kiln, pointed out.²⁶ For example, in Caoshengcun the familiar and personal connections between the owner of the kiln and the party secretary of the village had been used by the latter to obtain bricks at special prices for public works in the local school and in the village government seat.²⁷ If, on one side, this arrangement had caused resentment among the villagers, who considered this as an embezzlement of public funds, on the other side this agreement brought benefit to the whole community.

The support of the local community is also one of the reasons why escaping from the kilns is so hard. Since the local workers are too expensive and almost impossible to exploit due to the protection of their familiar networks, the slaves are inevitably "people from the

²⁵ Wu Si talks about the "local tyrants system" in the already quoted interview with Chen Jianli on *Nandu Zhoukan*. About these "hidden rules" and the "principle of blood payment" see Wu Si, *Qian Guize: Zhongguo Lishi zhong de Zhenshi Youxi* (The hidden rules: the real game in Chinese history), Fudan Daxue Chubanshe, Shanghai 2009; Wu Si, *Xuechou Dinglü: Zhongguo Lishi zhong de Shengcun Youxi* (The principle of blood payment: the game of survival in Chinese history), Yuwen Chubanshe, Beijing, 2009.

²⁶ Zhu Hongjun, "Hongdong heizhuanyao shenshi diaocha" (Investigation on the story of the black brick kiln in Hongdong county), *Nanfang Zhoumo*, 21 June 2007, pp. A1-A2. In June 2007 the authorities relieved Wang Dongji by his responsibilities both in the Party and the administration.

²⁷ Zhang Tao, "Wang Dongji: Wo que you shizhi zhi zui" (Wang Dongji: I am really guilty of having derelicted my duties), *Xinjingbao*, 9 November 2007, p. A66.

outside" (*waidiren*). Sometimes it is the local people themselves who supply the kilns with the manpower they need. This is what happened to Shen Haijun, a 38 years old man from Jiangsu province, who ended up as a slave in the Caoshengcun kiln while looking for his mother, a sixty years old widow who had been sold to an old bachelor in Shanxi by a relative. Shen Haijun told the journalists that, once he had arrived in Caoshengcun, he had asked an old lady for directions. Pretending to introduce him to a well-paid job, she then sold him to the kiln owner, Wang Dongji's son.²⁸

For what regards the higher administrative levels, the Chinese media reported in detail about the role of the Shanxi bureaucracy in covering the kilns existence. In a reportage published on *Nanfang Zhoumo* in July 2007, Ma Changbo described a series of events which proved that the Shanxi local authorities were aware of the existence of the kilns well before the explosion of the scandal. In particular, on 20 April, one month before the airing of Fu Zhenzhong's TV special, the police in Linyi had freed twenty-seven slaves in a kiln; on 7 May, the Henan parents had reported to the Jincheng police that maybe their children had been taken as slaves in some kilns in Linchuan county and the local public security office had launched an inspection, without finding any trace of the boys; on 16 May, Jincheng police had started an operation among the migrant workers in the area under its administrations, saving forty-seven people from slavery; at the end of May, the Shanxi Public Security Bureau had received a report which stated that in Yuncheng and Jincheng there were problems of forced labour and, Li Lianqi, Deputy Director of the provincial Public Security Bureau, had given instructions to investigate the matter; finally, Yuncheng police had organized an operation against the kiln in the week from 5 to 11 June.²⁹

Such accounts highlight two facts: on one side, that many people in the middle-high echelons of the provincial administration were aware of the existence of the kilns and some steps were taken in order to address the problem; on the other, that nobody was willing to publicly expose the issue. Before the storm of June 2007, the local bureaucracy tried at all costs to avoid the exposure of the scandal, so participating in the perpetuation of the local tyrants systems. This dynamic is plain if we consider the story of Li Ding, the police officer from the Guangshengsi township police station who discovered the case of the kiln in Caoshengcun village. Arrived in the kiln on the morning of 27 May 2008 for a routine check,

²⁸ Shen Haijun spent three months in the Caoshengcun kiln, suffering repeated beatings. His legs were broken by the guards and, since nobody treated his wounds, he became a cripple. Liu Jianzhuang, "Wo wei 'Shanxi heizhuanyao' beihairen da guansi" (I am suing on the behalf of the victims of the Shanxi black brick kilns), *Falü yu Shenghuo*, n. 16, August 2007, pp. 47-48.

²⁹ Ma Changbo, "Fengbao yanzhong de Shanxi guanyuan" (The Shanxi officials at the centre of the storm), *Nanfang Zhoumo*, 5 July 2007, p. A2.

he was the first to notice that something was wrong. It was just thanks to his initiative that thirty-one slaves were rescued and the murder of a mentally disabled worker was exposed. Yet, instead of being commended, he was subjected to a disciplinary investigation for dereliction of duty.³⁰

Not only the discourse of law and rights does not penetrate realities as the kilns, but sometimes it is subverted by those same people who should be the first to promote it, Zhu Guanghui, a boy from Henan, had a direct experience of this. Rescued by the police from a kiln on 27 April 2007, he was immediately sold back to another kiln by a local labour inspector, who even collected an "intermediation fee" of three hundred yuan from the back salaries of the boy. At the end of May, Zhu was rescued again during a police operation launched by the Yuncheng Public Security. In the following days, a local TV station managed a confrontation between him and the labour inspector in front of the cameras. Nobody could have imagined that on that same afternoon the labour inspector would have deceived the boy once again, selling him to another kiln. Zhu Guanghui was then rescued a third time and went back home safely only on 18 June 2007.³¹

The response of the authorities

In June 2007, the central authorities reacted launching a provincial investigation into the Shanxi kilns. According to official data, the police checked 86.395 employers, finding out that 36.286 (42%) of them did not have any permission; 4.861 brick and tiles kilns were inspected, among which 3.186 (63,3%) were found to be lacking any registration; in total, the workers in the kilns were 81.000; only 17 kilns were found to have severe problems, among them 13 with issues of child labour. On the whole, 359 workers were rescued, among them, 121 mentally disabled adults and 15 children.³² In the meanwhile, the top echelons of the Party launched a campaign to "sweep" the ranks of the local bureaucracy and 95 officials were punished for malfeasance and dereliction of duty, while president Hu Jintao, Prime Minister Wen Jiabao, Shanxi Party secretary Zhang Baoshun and provincial governor Yu Youjun raised their voices asking further investigations to reveal cases of corruption related to

³⁰ *Ibid.*

³¹ Zhu Hongjun, "Bei zaici zhuanmai hou, shaonian Zhu Guanghui hui jia le!" (After having been sold again, Zhu Guanghui finally came back home!), *Nanfang Zhoumo*, 21 June 2007, p. A3.

³² Wang Yongxia, "Lianhe gongzuo zu tongbao Shanxi 'heizhuanyao' shijian chachu qingkuang" (The joint work group report on the situation of the investigation on the "black brick kilns" in Shanxi), *Xinhua wang*, 13 August 2007, http://news.xinhuanet.com/politics/2007-08/13/content_6523559.htm. Last access, 9 March 2012.

the kilns.³³

At the same time, the Chinese leadership rode the wave of the scandal to promote its political agenda. In particular, the media coverage of the kilns was used to accelerate the troubled legislative process - already described in the first chapter - that led to the passage of the Labour Contract Law, then stranded due to the emergence of a heated public debate about the advisability of introducing new guarantees for workers' rights in a development phase still fuelled by the low labour costs.³⁴ After more than three years of top level discussions and more than a dozen blueprints, the kilns scandal was an essential factor which led to the ultimate approval of the Law, which was passed at the end of June, right in the middle of the media storm.³⁵ To quote Xie Liangming, then Deputy Director of the Department for legal affairs of the ACFTU: "[If the kilns scandal had not happened] I think that the debate would have continued. Since the scandal deeply moved the legislative bodies, including many committee members who felt that such situations could not be understood and that it was necessary to be more severe, the passing of the Law was pushed."³⁶

The link between the kilns scandal and the passing of the Labour Contract Law has been made explicit many times on the official media, with the new Law often described as a panacea which would have solved all labour related problems in China, including slavery.³⁷ Scholars as Li Jianfei from the People's University underlined how the draft Law was revised after the exposure of the kilns to include specific articles aimed at disciplining the employers without licence, those who hurt their employees and also the officials who derelicted their duties.³⁸ Even the article 38 of the new Law, which stated that "if an employing unit forces a

³³ "Hu Jintao Wen Jiabao deng dui Shanxi heizhuanyao an zuo pishi" (Hu Jintao, Wen Jiabao and other give indications about the case of the black brick kilns in Shanxi), *Zhongguo Xinwen Wang*, 15 June 2007, <http://society.people.com.cn/GB/41158/5871815.html>. Last access, 6 March 2012. See also the interview of Yu Youjun with the journalists of the *Nanfang Zhoumo*, Shou Beibei, "Zhuanfang Shanxi shenzhang: Jiantao heizhuayao, wang shandai Shanxiren" (Interviewing the Shanxi governor: Discuss thoroughly the black brick kilns, in the hope to get a more positive view of the people of Shanxi), *Nanfang Zhoumo*, 4 July 2007. <http://www.infzm.com/content/9898>. Last access, 6 March 2012.

³⁴ About this debate see Mary Gallagher and Baohua Dong, "Legislating harmony: Labor law reform in contemporary China", in Sarosh Kuruvilla, Ching Kwan Lee and Mary Gallagher (eds.), *From Iron Rice Bowl to Informalization: Market, Workers and the State in a Changing China*, Cornell University Press, Ithaca and London, 2011, pp. 36-60.

³⁵ About the legislative process which led to the approval of the Labour Contract Law see Hans Hendrischke, "Changing legislative and institutional arrangements facing China workplace", in Peter Sheldon, Sunghoon Kim, Yiqiong Li and Malcom Warner (eds.), *China's Changing Workplace: Dynamism, Diversity and Disparity*, Routledge, London, 2011, pp. 51-67.

³⁶ A transcript of the TV show *Jingji Banxiaoshi* of December 27th 2007 is available on Baidu Wenku on <http://wenku.baidu.com/view/9d00c7d549649b6648d7478f.html>. Last access, 4 March 2012.

³⁷ Maya Alexandri, "Shanxi slaves and the labor contract law", *Danwei*, 30 June 2007, http://www.danwei.org/law/shanxi_slaves_and_the_labor_co.php. Last access, 4 March 2012.

³⁸ "Zhongguo 30 nian lifa gushi: 'Heizhuanyao' jiasu laodong hetongfa xiugai" (Stories from 30 years of legislation in China: the "black brick kilns" move forward the revision of the Labour Contract Law), *Jiancha Ribao*, 15 December 2008, http://news.xinhuanet.com/politics/2008-12/15/content_10506098.htm. Last access, 4

person to work by resorting to violence, intimidation or illegal restriction of personal freedom, or if it gives instructions in violation of rules and regulations or gives peremptory orders to the worker to perform hazardous operations, which endanger his personal safety, the latter may revoke the labour contract forthwith without notifying the employing unit of the matter in advance" was hailed as an important progress in order to eradicate the kilns.³⁹

Conclusions

In spite of all official emphasis, the official data put forward by the authorities to demonstrate their resolution in fighting the slavery in the kilns were hailed with considerable skepticism by the public. Not only at the time there was a wide disbelief about the effectiveness of an investigation announced with such fanfare from the media, but in the following months, when the interest of the public opinion had already faded away, the Chinese press reported a series of stories that once again exposed the impotence of the authorities to curbe the phenomenon of the local tyrants system through the rule of law. These stories went from the local State threatening some former slaves who had resorted to legal means to obtain a compensation, to the light verdicts against the owners of the kilns;⁴⁰ from the return to power of some official who had been demoted on the wake of the scandal, to the missed payment of the compensations to the former slaves.⁴¹ It did not matter that in December 2007 the central government adopted a national action plan to fight human trafficking and that the lawmakers amended the Criminal Code in order to add the crime of

March 2012.

³⁹ *Ibid.* For the English translation of the Law see <http://www.acftu.org.cn/template/10002/file.jsp?cid=56&aid=590>. Last access, 9 March 2012.

⁴⁰ The threatened workers were Chen Xiaojun and Pang Feihu, two slaves rescued from the Caoshengcun kiln. Chen Lun, *Heiyao nugong: Heizhuanyao yu yaonu wugan* (The slaves of the kiln: the black brick kilns have nothing to do with the kilns slaves), *Nandu Zhoukan*, n. 182, 28 December 2007, p. 31. If the guard who actually killed the disabled worker was sentenced to death and the *baogongtou* was sentenced to life imprisonment, the owner of the kiln in Caoshengcun village was sentenced to nine years in prison, a sentence that was reduced to five years in the appeal trial. The other guards in the kilns were sentenced to imprisonment for periods from one and a half year to three years. And yet there are accounts that months after the scandal, Yue Xishan, the owner of one of the first kilns visited by Fu Zhenzhong was still managing his own kiln, despite all the doubts about the provenience of his workers. Fang Ying, "Shanxi 'heiyao nugong' zai genzong: bai yu jiazhang reng zunzi" (Still on the trail of the kilns slaves: more than one hundred parents are still looking for their children), *Nandu Zhoukan*, n. 200, 14 March 2008, pp. A32-A34.

⁴¹ In April 2008, the media covered the story of Duan Chunxia, a Shanxi local official who in July 2007 had been demoted from her position. Less than one year after the scandal, she was reinstated in her former position, causing an uproar among the netizens. The local authorities then intervened, demoting her once again. "Shanxi yin heizhuanyao shijian bei san nüguanyuan fuchu shimo" (An official demoted from her position for the kilns scandal is back in her place), *Zhongguo Xinwen Wang*, 15 April 2008, <http://news.sina.com.cn/c/2008-04-15/032715355380.shtml>. Last access, 12 March 2012. Chen Jiang, "Heiyao nugong: Tongxiang guojia peichang zhi lu" (The slaves of the kilns: walking on the road toward the State compensation), *Nandu Zhoukan*, n. 154, 14 September 2007, p. 16.

forced labour.⁴²

In the past few years, many articles on the media confirmed the fact that the kilns are still there. In May 2009, the *Xinhua* news agency reported that in Jieshou, Anhui province, the police had just rescued thirty-two mentally disabled workers enslaved in two different kilns.⁴³ According to the available accounts, these people were deceived by a human trafficker, in this case a taxi driver, who earned two to three hundred yuan for every person that he "introduced" to the kilns. Closely guarded by thugs who did not hesitate to resort to violence, these slaves, whose age varied from twenty-five to forty-five, lived locked in a courtyard, forced to work ten hours a day without receiving any wage beside a few yuan for their personal expenses. The police then arrested ten people, including the *baogongtou* and the owners.

In June 2010, Chinese media then reported that the police in Shilin county, Yunnan province, had rescued about twenty slaves from a local kiln.⁴⁴ One of the slaves, a man from Chongqing, described to the journalists the brutality of his guards who, in order to make him work seventeen hours a day, beat him with steel bars and leather belts. Similarly, in December 2010, the story of a trafficking in disabled people based in Qu county, Sichuan province, was widely reported by the national media. In that case, everything was happening with the open connivance of the local authorities, under the cover of a public shelter for disabled people.⁴⁵ Finally, in September 2011 Cui Songwang, a reporter for a Zhengzhou television station, hung around a train station posing as a disabled man for two days, until he was kidnapped and sold to a kiln manager for five hundred yuan. Cui said he was forced to work for three hours, beaten and deprived of water before he managed to escape and report the case to police.⁴⁶

⁴² State Council, "China national plan of action on combating trafficking in women and children", http://www.humantrafficking.org/uploads/publications/China_National_Plan_of_Action_on_Combating_Trafficking_in_Women_and_Children_December_2007.pdf. Last access, 9 March 2012. Wang Xiaobo, "Xingfa ying zengshe baoli qiangpo laodong zui" (The crime of violent forced labour should be added to the Criminal Law), *Yanzhao Dushibao*, 11 March 2008 p. 5. The crime of forced labour was added to the Criminal Law with the eight amendment, passed in February 2011.

⁴³ Cheng Shihua, "Anhui Shoujie jingfang jiuchu 30 yu ming zai heizhuanyao zuo kuli de zhizhang renyuan" (The Shoujie police in Anhui province saved more than 30 mentally disabled persons who were to work as coolies in black brick kilns), *Xinhua Wang*, 21 May 2009, http://news.xinhuanet.com/legal/2009-05/21/content_11414567.htm, last access on March 9th 2012; Cheng Shihua, "Anhui Shoujie heizhuanyao shijian diaocha: Zhizhangzhe zao fanmai cheng laoli" (Investigation on the case of the black brick kiln in Shoujie: mentally disabled people have been sold as labour force), *Jingji Cankaobao*, 22 July 2009, <http://news.sina.com.cn/c/sd/2009-07-22/092818272706.shtml>, last access on 9 March 2012.

⁴⁴ Huang Yanchun and Li Liqin, "Chongqing nanzi zai Yunnan dang yaonu de 112 tian" (112 days as a slave in a Yunnan kiln for a Chongqing man), *Chongqing Wanbao*, 24 August 2010, p. 17.

⁴⁵ Ran Jin, "Nugong beihou de 'shanren' - Sichuan Quxian canjiren ziqiangdui diaocha" (The "philantropists" behind the slaves - An investigation into the disabled people self-strengthening team in Qu county), *Nanfang Zhoumo*, December 23rd 2010, <http://www.infzm.com/content/53890>. Last access, 5 March 2012. See also "Couple arrested in slave scandal", *Shanghai Daily*, 18 January 2011, http://www.china.org.cn/china/2011-01/18/content_21760595.htm. Last access, 5 March 2012.

⁴⁶ Shen Zizhong and Qiu Yanbo, "Yi ge jizhe de si tian de zhizhan nugong tian" (A journalist's experience of

The persistence of the kilns highlights the limits of the discourse of the law in today's China. If there is no lack of testimonies about the penetration of the official language of the law even in marginal areas in the cities and in the countryside, where it eventually ends up being manipulated by farmer, workers and others disadvantaged social groups, the existence of microcosms like the kilns demonstrate that there are still significant grey areas where the law simply does not matter.⁴⁷ From this point of view, the official emphasis on the Labour Contract Law as a tool to eradicate the kilns tells two different stories: on one side, it is the story of a collective illusion built from above and aimed at creating an impression of order and rationality where in fact only "hidden rules" apply; on the other side, it is the story of a savvy manipulation of the law discourse aimed at boosting the legitimacy of the Party, so perpetuating the political *status quo*.

Yet, contrarily to what it seems, this emphasis on the Labour Contract Law as a tool to fight against situations like the slavery in the kilns is far more than a naive legitimization strategy adopted by the authorities in order to face a public opinion crisis. This is more of a reflection of the discourse about the law that the Chinese authorities have built and promoted in the past twenty years, in labour as in many other fields. As Anita Chan and Kaxton Siu underlined in a recent paper, "the Chinese social discourse on 'rights protection' is characterized by the acceptance of prevailing laws as the standard by which work condition and wages should be set. *Weiquan* is a hegemonic discourse deployed by the political and social elites, and from there it populates the vocabulary and consciousness of this new working class."⁴⁸

As we have already seen in the first chapter, since the early Nineties, when the Labour Law was discussed and passed, the Chinese authorities have started a process of construction of the law in the realm of labour which, despite some resemblance of participation from below, for example in the case of the popular consultation about the first draft of the Labour Contract Law, has entirely been orchestrated from above.⁴⁹ From this point of view, the law is

four days as a mentally disabled slave), *Dongfang Jinbao*, 6 September 2011, <http://www.jinbw.com.cn/jinbw/xwzx/jbds/201109063961.htm>. Last access, 5 March 2012.

⁴⁷ About the manipulation of the Law by Chinese farmers see Kevin O'Brien and Lianjiang Li, *Rightful Resistance in Rural China*, Cambridge University Press, Cambridge 2006; for a perspective on migrant workers see Ching Kwan Lee, *Against the Law: Labor Protests in China Rustbelt and Sunbelt*, University of California Press, Berkeley 2007.

⁴⁸ Anita Chan and Kaxton Siu, "Chinese migrant workers: Factors constraining the emergence of class consciousness", in Beatriz Carrillo and David S G Goodman (eds.), *Workers and Peasants in the Transformation of Urban China*, Edward Elgar, London, 2012, forthcoming.

⁴⁹ About China's turn to the rule of law in labour relations see Mary Gallagher, *Contagious Capitalism: Globalization and the Politics of Labor in China*, Princeton University Press, Princeton, 2005. In March 2006, the NPA received more than 192.000 comments about the contents of the first draft of the new law, 65% of which were forwarded by ordinary citizens and workers, a number with just one precedent in modern China

a fundamental part of an hegemonic discourse, since it "induces people to comply with a dominant set of practices and institutions without the threat of physical force [and] induces passive compliance in large measure through its function as constitutive of social ontology - it provides rules for the proper construction of authorized institutions and approved activities [...]; it is a hegemonic code that replicates the social ontology in much the same way that a genetic code replicates a biological organism."⁵⁰ For this perspective, the official emphasis on the Labour Contract Law as a tool to eradicate the black kilns reveals more about the hegemonic aspirations of the Chinese State rather than an authentic belief in the thaumaturgic powers of the law.

The kilns are an extreme example, but in China there are many sweatshops where State laws and regulations simply do not apply, a testimony to the fact that the "local tyrants systems" and the "hidden rules" are not confined to the depths of the countryside, but are able to survive even in urban areas, where the discourses of "civility" and "legality" are much stronger. This is due not only to the contradictions of the developmental State, with its emphasis on development at all costs, but also to the absence of democratic channels of representation for Chinese citizens, including workers. Yet, it is not sure whether the creation of democratic channels would help eradicating kilns and sweatshops, considered the roles played by the local communities in supporting them. As the case of the kilns points out, at the moment the media are the strongest deterrent, but – as we have seen in the fifth chapter - they can do so only in very specific circumstances: the traditional media always need to find a balance between their increasingly commercial nature and the restraints coming from the State control, while the new media suffer from an overflow of information and tend to focus on extreme cases like the kilns, overlooking the ordinary reality of most sweatshops. In all of this, the law play just a marginal role. At least for now.

history, namely the Constitution passed in 1954. Guan Huai, "Goujian hexie laodong guanxi yu laodong fazhi jianshe" (The establishment of harmonious labor relations and the edification of the labor law system), *Faxue Zazhi*, 2007 n. 3, pp. 29-32; Zhu Zhe, "New labor law aims to cap damages", *China Daily*, 25 April 2007, p. 2.

⁵⁰ Douglas Litowitz, "Gramsci, hegemony and the law", *Brigham Young University Law Review*, n. 2/2000, pp. 515-551.

Conclusions

This dissertation has provided some insights in the way the discourse on labour and rights is produced in China today. As we have seen in the first chapter, for the sake of both political legitimacy and social stability, the Chinese Party-State has a significant stake in promoting labour laws and regulations among the workers. Yet, this official emphasis on the importance that workers resort to the law as a weapon should not be misinterpreted. In fact, the discourse on labour rights promoted by the Chinese officialdom is very peculiar, since - contrarily to what happened in Europe, where labour laws were born from the struggles of self-organized labour movements - the rights bestowed on Chinese workers are entirely the result of a top-down initiative. Although the Chinese authorities have often been able to make virtue out of necessity, in China new laws - as well as new raises in minimum wages - are promulgated only when the State decide so. In this sense, the Chinese labour law could very well be defined as an "hegemonic discourse."

Nevertheless, the Chinese State has to deal with contradictory forces in its legislative activity. While on one side, as we have seen in the second chapter, the official union can take advantage of its institutional embeddedness to exert some influence on the drafting of new labour regulations, on the other the Chinese authorities cannot help but take into account the interests of the entrepreneurial world, in particular of those foreign investors who are still fuelling the Chinese economic growth with their investments. As described in the first chapter, in the past few years the occasionally conflicting imperatives of political legitimacy

and economic growth have stalled the legislative process of various laws, especially when the provisions were perceived as a threat to corporate interests, as in the cases of the Labour Contract Law and its various amendments.

In spite of the fact that the Chinese authorities have the custom of publishing all the draft laws online, allowing the public to send its comments and feedbacks before passing them, civil society is unable to exert any significant influence on the legislative process. Grassroots labour groups are weak and fragmented in China. As we have seen in the third chapter, these NGOs not only have a very strained and conflicted relationship with the State, but also have many difficulties to gain the trust of the workers. In substance, they are far from being the blossoms of independent trade unionism the international labour movement would like them to be.

The workers themselves maintain a mixed attitude towards the law. As the fourth chapter has illustrated, in spite of much rhetoric on a "rights awakening" allegedly undergoing among younger migrant workers in China, many migrant workers are not aware of the most basic provisions of the Chinese labour law, not even when they concern their most direct interests, as minimum wages, work hours and overtime. At the same time they believe that in case of problems, the law will be able protect their rights. This belief is reflected in the dynamics of collective mobilization, where migrant workers rarely challenge the discourse of law and rights promoted by the authorities, barely asking for what should already be theirs by law.

In spite of all propaganda, the gap between the official discourse and reality remains plain. As the fifth chapter has described, aggrieved workers in China are often left to themselves to fend with the complexity of the legal system, a situation which usually lead to strong feelings of disenchantment. Furthermore, as the sixth chapter has explained, China is full of grey areas where the law simply does not apply, as the "black kilns" or the innumerable sweatshops which even today can be seen everywhere in the world factory. Whether this gap between discourse and reality will be filled from above, by the authorities, or from below by the workers remains to be seen.

Appendix I

Chinese Labour: Same Story, Different Perspectives

Chronology

Republic of China (1912-49)

- 1914-18: Early wave of industrialization in China
- 1919: First Conference of the International Labour Organization held in Washington recommends the introduction of labour legislation in China
- August 1921: Secretariat for the Organization of Labour established by the Chinese Communist Party
- May 1922: First All-China Labour Conference held in Guangzhou
- 7 February 1923: Striking workers of the Beijing-Hankou railway line are massacred by the forces of warlord Wu Peifu
- 29 March 1923: First labour legislation adopted in China (Temporary Regulations on Factories’')
- May 1925: All-China Federation of Trade Unions established in Guangzhou during the second All-China Labour Conference
- 30 May 1925: May Thirtieth Movement, general strikes launched in Shanghai, Canton and Hong Kong

- 11 April 1927: Killings of trade unionists and workers in Shanghai by the local triads
- 1927-1937: Laws on factories, trade unions and labour disputes passed by the nationalist government with capital in Nanjing
- November 1931: Labour legislation passed by the communist government of the Jiangxi Soviet

People's Republic of China (1949-)

- 1950: Trade Unions Law passed
- 1951: Li Lisan, Minister of Labour and leader of the All-China Federation of Trade Unions, is purged after pushing for greater autonomy for the official union
- 1953: Establishment of the household registration system
- 1955-1956: Complete nationalisation of the industry
- Spring 1957: The All-China Federation of Trade Unions and workers take part in the "One Hundred Flowers Campaign", asking for more autonomy for Chinese unions
- 1958-1960: Great Leap Forward
- 1960-1966: "Struggle between the two lines", with the supporters of the "Anshan Constitution" and the "Seventy Rules for Industry" on opposite fronts
- 1966-1978: All-China Federation of Trade Unions shut down, workers allowed to set up their own revolutionary groups in the factories
- 1975-1985: Reintroduction of flexible salary structures (piece rate and bonus)
- 1978: Ninth Congress of the All-China Federation of Trade Unions, the official union is re-established
- 1980: First Special Economic Zones established in Shenzhen, Zhuhai, Shantou, Xiamen and Hainan
- 1986: Enforcement of the labour contract system for all the new employees in State owned enterprises, formal end of life tenure or "iron rice bowl" (*tiefanwan*)
- May-June 1989: Emergence of short-lived independent unions in various Chinese cities

1992:	Deng Xiaoping's Southern Tour; amendment to the Trade Union Law
1994:	Labour Law passed
1995:	Reform of the State owned enterprises intensifies, according to the principle of “keeping the big and letting go of the small” (<i>zhuada fangxiao</i>)
2001:	Amendment to the Trade Union Laws
March 2006:	Popular consultation on the first draft of the Labour Contract Law, more than 192,000 comments submitted in a month
2007:	Labour Contract Law, Labour Dispute Mediation and Arbitration Law and Employment Promotion Law passed
May 2010:	Strike at the Honda factory in Nanhai widely reported by the Chinese and International media
2010:	Social Security Law passed

Overview

When the International Labour Organization (ILO) held its first Conference in Washington in 1919 after the end of the First World War, a discussion arose around the issue of labour conditions in China. The Conference proposed the creation of a social legislation in China, with the aim of protecting workers in more advanced countries against competition from low-paid labour force in East Asia. It suggested the enforcement of a limit of ten working hours per day and sixty hours per week for adults in factories employing more than one hundred people. Eventually, in 1922 such rules were issued by the Chinese government, but never enforced.

Almost a century later, Chinese labour is still at the centre of the international debate, with the “China price” being blamed for what is perceived as a general decline in labour conditions, wages and labour protection in many developed countries. In the last three decades, after the Chinese government decided to open the economy of the country to the world, stories of low wages, unpaid salaries, labour accidents, mass lay-offs and strikes have been widely and regularly reported by the Chinese and international media, fuelling criticism of the so-called “world factory”. This, in turn, nourished the idea that China, thanks to its artificially compressed labour costs, is literally “sucking” jobs from developed countries, a

discourse which became much stronger after 2001, following the Chinese entry in the World Trade Organization.

The story of this “China price” dates at least three decades back. Before the beginning of the economic reforms in 1978, China had no labour markets for industrial workers and jobs were allocated by the State. Back then, China’s State-dominated industry had a particular employment model, often described as the “iron rice bowl” (*tiefanwan*), a term which designated a lifetime position with low monetary salaries but comprehensive welfare and benefits provided by a State-owned “work unit” (*danwei*). Salaries were kept “rationally” low, while markets were replaced by a rationing system, and the work unit became a redistributive hub in urban areas.

The situation began to change, progressively, in the Eighties, following three distinct processes: first, the development of a private sector in China, boosted by foreign investments in the Special Economic Zones; second, the loosening of controls on internal migrations, accompanied by the appearance of urban markets for food, houses and other goods; finally, the introduction in 1986 of the labour contract system for all new employees in the State industry. The final blow to the iron rice bowl employment model then came in the middle of the Nineties, when the authorities decided to implement the 1989 Bankruptcy Law and allow many SOEs to go bankrupt, especially small and inefficient ones, while retaining control and reinforcing the largest enterprises and the most strategic industries.

With the progressive demise of work units (although many large enterprises continued to provide above-average welfare to their workers) and the emergence of a labour market (in fact a number of fragmented, local labour markets), a new set of social problems emerged: shortage of skilled labour was accompanied by unemployment of the traditionally privileged State workers, labour disputes were ripe and frequent, low and unpaid wages and excessive overtime became common in certain booming industries like construction, all in the virtual absence of a social security net that could replace the role of the work-unit. In a context of legal uncertainty and scarce supervision, sweatshops (*xuehan gongchang*) have appeared everywhere, causing recurrent uproar among the public opinion, both in China and abroad.

To face this situation, in the past twenty years, the Chinese government has implemented a series of laws which not only regulate labour relations in the workplace, but also aim at enhancing labour protection. The 2007 Labour Contract Law, despite its on-going implementation problems, is generally considered a big step forward for Chinese workers' rights. Other important laws include the Labour Law (1994) that defined the rights of Chinese

workers and their basic protection; the Trade Union Law (1992, amended in 2001) that better defines the role of the All China Federation of Trade Unions but maintains its monopoly of labour representation; the Labour Disputes Mediation and Arbitration Law (2007), the Employment Promotion Law (2007) and the Social Security Law (2010). The passing of each of these laws has been accompanied by heated public debates: when the first draft of the Labour Contract Law was published in March 2006, for example more than 192,000 comments were submitted in a month.

It is often noted that while China has a large body of labour regulations, they are not properly implemented, or they are applied differently in different parts of the country. Part of the reasons given for this situation is the overwhelming importance of economic growth in particular in the eyes of local governments and local leaders. Dependency on international capital (that leads to lack of implementation of labour regulations by local government) is another factor often cited which strongly affects the prospects for the implementation of Chinese labour legislation. Among the opinions submitted after the publication of the first draft, critical documents issued by foreign chambers of commerce suggested such a law would have a negative impact on the country's competitiveness and its appeal as a destination for foreign investment. In the following months, as a result of more discussion and further critiques, new drafts largely expunged the most innovative clauses, the ones which, if implemented, would have given Chinese workers and the official union a significant voice on workplace-related matters.

Despite resistance from local State and foreign investors, the context for China's labour market is undergoing massive changes. In 2003, Chinese media reported for the first time that the flow of migrant workers from the countryside had started to dry up and many factories in the most developed coastal areas could not fill vacancies. Since then, the so-called "migrant labour famine" (*mingonghuang*) has become a significant problem for local authorities and entrepreneurs in the highly industrialized areas near the coast. With the passing of time, a new generation of better skilled migrant workers has become both more aware of opportunities and more demanding, resulting in higher costs for factories in the labour intensive sectors, while the most advanced regions have changed their economic strategy from export orientation to higher yielding production for the domestic consumer market. It has generally been observed that such structural changes will eventually lead to a general increase in wages and an improvement of labour conditions.

Chinese workers have never been silent in front of the infringements of their rights.

According to a study of the Chinese Academy of Social Sciences, in 2003 alone in China happened about 58,000 “mass incidents”, which involved more than 3 million persons. Among them, the most relevant social groups were workers and pensioners, with about 1,660,000 participants, 46,9% of the total number. Nevertheless, it appears that workers protests in China are mainly driven by economic reasons and rarely end up challenging the official narratives promoted by the State, trying instead to manipulate the official discourses in a sort of *captatio benevolentiae* intended for the authorities. Furthermore, most of the workers' protests just aim at addressing ex-post the violation of rights that have already been recognized by the State, not at requesting new rights.

Two major incidents in the Spring of 2010 contributed to revive the international interest towards Chinese workers' struggle. First, Chinese and international media widely reported a series of suicides at the Foxconn factories in Shenzhen, linking them to poor labour conditions and managerial strategies adopted by this Taiwanese company. Then, a few weeks later, a major strike started at a Honda factory in Nanhai, where workers demanded not only higher salaries, but also the right to a more representative union. Since then, the Chinese and Western discourses about Chinese labour have been shifting. While for many years workers, especially migrant workers, were portrayed as powerless victims under assault by the forces of international capitalism, 2010 witnessed the rise of a new narrative framed in terms of “rights awakening.” This new narrative often highlights the importance of a generational transition, as younger workers are seen as smarter, better educated and therefore more conscious about their rights than the earlier generation.

Perspectives

1. The Official Chinese View

The official narrative on labour depicts workers, especially State employees, even today, as the true masters of the country. This idea is still reproduced, after several revisions of the PRC Constitution, that, at article 42, states that “Work is the glorious duty of every able-bodied citizen. All working people in State-owned enterprises and in urban and rural economic collectives should perform their tasks with an attitude consonant with their status as masters of the country.”

Despite its recent openings towards other social groups, including the admission of entrepreneurs to Party membership, under the aegis of the “Theory of Three Represents”, the

Chinese Communist Party still draws part of its legitimacy from the relationship with the working class. The Constitution, defines the Communist Party of China as the “vanguard both of the Chinese working class and of the Chinese people and the Chinese nation,” while its members are “vanguard fighters of the Chinese working class imbued with communist consciousness.”

The contradiction between the language of a working class state and the reality in today’s labour market is evident to both observers and the Chinese Communist Party. This is also compounded by the fact that the Chinese working class is today much more complex than it was before, fragmented in a number of social groups with different - and at times competing - interests. Not only is the position of migrant workers different from that of the *xiagang* (laid off workers from former State owned enterprises), but within each group a complex fragmentation based on age, education, and skills is also emerging. In a society where families invest heavily in education, many also see as problematic the “ant tribe” (*yizu*) of under-employed or unemployed university graduates.

In response to the more complex situation, Chinese authorities have promoted a new narrative of the working class, articulated in legal terms, a discourse revolving around the centrality of workers’ rights in the rule of law. At the same time some concepts coming from the pre-reform era have been retrieved and adapted to a contemporary reality.

Harmonious labour relations

The term “harmonious labour relations” (*hexie laodong guanxi*) has been coined in recent years to define the official goals of labour policy. According to the official definition, harmonious labour relations should have four main features: they should be contractual (*hetongxing*), based on the rule of law (*fazhixing*), democratic (*minzhuxing*) and aimed both at rescuing the working class and maintain social stability (*jiuzhuxing*). The main components of this discourse can be found in labour contracts, labour supervision and workers' quality (*suzhi*).

The legal protection of rights is a fundamental element of the narrative on harmonious labour relations. According to the “White Paper on the Socialist Legal System with Chinese Characteristics”, by the end of August 2011, the Chinese government had enacted eighteen social laws (*shehuifafa*), that is regulations to guide labour relations, social security, social welfare and protection of rights and interests of special groups. This official document

underlines the fact that “China's Labour Law deals with labour relations and other relationships closely related to them, such as labour protection, labour safety and hygiene, occupational training, labour disputes and labour supervision, thus establishing China's basic labour system”.

Besides the 1994 Labour Law - the first comprehensive regulation of labour relations in every company on the Chinese territory irrespective of ownership - in the past twenty years Chinese central authorities have enacted a series of labour related laws which include the Law on Mine Safety; the Law on Prevention and Control of Occupational Diseases; the Production Safety Law; the Labour Contract Law; the Employment Promotion Law; the Law on Labour Dispute Mediation and Arbitration; the Trade Union Law; and the Social Insurance Law.

Since the early Nineties, the Chinese government has also been strongly promoting the legal process among workers, publicly exhorting them to "use the weapon of the Law" (*yi falü wei wuqi*) to protect their lawful interests and rights. Legal materials and handbooks produced by the government and the official union have been widely distributed and the texts of the new laws have been widely publicized. In particular, the 2007 Labour Contract Law has received an extensive coverage by the Chinese official media, with the *People's Daily* even calling for a public contest to test the knowledge of the new Law among the readers.

Nevertheless, this strong legal discourse often clashes with the inefficiency and the structural problems of the Chinese legal system. Workers who want to redress their grievances through officially sanctioned channels not only have to face the partiality and inefficiency of State actors as legal aid centres, labour offices, letters and visits bureaus and trade unions, but also the scarce interests in labour disputes by professional lawyers. Under such circumstances, many workers develop an attitude that Mary Gallagher has defined “informed disenchantment”.

According to Gallagher, Chinese workers who use the law would rapidly move from high expectations to a very negative evaluation of the effectiveness of the legal process. As a result, the entire system revolving around the administration of justice produces a group of citizens who are perfectly aware of the legal mechanisms but also completely disenchanting.

Sense of mastery

In the decade since Hu Jintao and Wen Jiabao have risen to power, a stronger

emphasis has been put on the social aspects of the Chinese development, in an attempt to mitigate the worrying effects of the reforms. In this context, the narrative about labour has undergone a notable shift, especially with regards to migrant workers (*nongmingong*) and other marginal groups (*ruoshi qunti*).

According to data from the National Bureau of Statistics, at the end of 2011 there were 240 million workers working away from their place of residence. Despite changes in the strict household registration system that prevented mobility from rural areas to industrial centres during the Maoist era, these workers still have a different status from that of local residents in the receiving areas, mainly urban or peri-urban. As non-residents they are entitled to work but not to access the welfare provided to local residents. Their situation, thus, greatly depends on the capacity or willingness of their employers to pay for health, accident and old age insurance schemes.

While an all-out abolition of the household registration system still seems unlikely, the Chinese government has promoted in the last few years numerous policies specifically aimed at addressing migrant workers' problems, following the principles outlined in a 2006 State Council document entitled "Some opinions on resolving the problems faced by migrant workers" and in a State Council document from 2008, "Notice on doing well the current work on migrant workers." Such policies include at the provision of free education to migrants' children in urban schools and a number of provisions regarding social security.

Also various local administrations that bear the blunt of managing large numbers of migrants, have experimented directly with the reform of the household registration system in order to better integrate migrant workers and recently urbanized farmers in the urban welfare system. For example, in June 2010 Guangdong province has adopted a new "point" system that rewards migrant workers with special characteristics or who perform certain social duties with an urban registration; in April 2011 Chengdu, among other urban area, has abolished altogether any remaining distinction between citizens with rural and urban *hukou*.

In recent years, China's official media has also been actively promoting a new narrative about migrant workers which emphasizes their contribution to the Chinese economy and their fundamental role in driving China's development, a new "sense of mastery" (*zhurenweng jingshen*) which echoes the role of State workers in the pre-reform ideology. Examples of this discourse are now ubiquitous.

Socialist trade unionism with Chinese characteristics

Trade unions in China are mass organizations, and they maintain the monopoly of representation of worker interests. China promotes what it calls “socialist trade unionism with Chinese characteristics” (*juyou Zhongguo tese shehuizhuyi gonghui*), as recently reaffirmed during the Sixth Plenum of the Fifth Executive committee of the official union federation, the All-China Federation of Trade Unions (ACFTU, *Zhonghua Quanguo Zonggonghui*).

The Trade Union Law allows to set up basic-level trade union committees in any enterprise, institution or government department with a membership of twenty-five or more. The establishment of basic-level trade union organizations, local trade union federations, as well as national or local industrial trade union organizations requires the oversight of the official trade union organization at the next higher level for approval, with the ACFTU as the unified national organization. According to official data, in 2010, the ACFTU had 239,965,000 members, more than 88 million of them migrant workers, organized in 1,976,000 grassroots unions. China’s unionism therefore maintains a corporative structure that makes it illegal for grassroots trade unions to operate independently of the ACFTU.

The ACFTU is itself under the supervision of the Party. It is required to “observe and safeguard the Constitution, take it as the fundamental criterion for their activities, take economic development as the central task, uphold the socialist road, the people's democratic dictatorship, leadership by the Communist Party of China, and Marxist-Leninism, Mao Zedong Thought and Deng Xiaoping Theory, persevere in the policies of reform and opening, and conduct their work independently in accordance with the Constitution of trade unions” (art. 4). Their basic duties are “to safeguard the legitimate rights and interests of workers and staff members. While protecting the overall interests of the entire Chinese people, trade unions shall represent and safeguard the legitimate rights and interests of workers and staff members” (art. 6).

With a structure still based on the Leninist principle of democratic centralism, the ACFTU’s action is blocked by its contradictory role as defender of both workers' rights and the enterprise’s interests. Trade union officials emphasise the search for a “double victory” (*shuangying*) for workers and management, and underline the importance of a cooperative approach between the social parties.

As Guo Jun, then head of the Democratic Management Department of the ACFTU, said in an interview with *Nanfang Zhoumo* in early 2008: “Those enterprises [who fear the

effects of the new labour legislation] have not noticed a very important issue: the Unions' idea of rights protection emphasizes cooperation with the enterprises to achieve a common success (*hezuo gongying*), the quest for the interests of both labour and capital (*laozi liangli*) and a collaborative development (*gongmou fazhan*), while in the process protecting employees' rights and interests.”

2. Contending views

Despite the political sensitivity of the issue of labour rights, the domestic debate has been intense and dissenting views have circulated in a variety of forms. The ACFTU often takes position in this debate, although not much of the internal discussion surfaces outside of the organization.

Chinese Academic debates: The Chinese scholar community is very vocal in debating labour policies and disputes occasionally feature on mainstream Chinese media. Two issues have been particularly central in this discussion in recent years: the right to strike and the new contract law.

The right to strike (*bagongquan*), is one of the grey areas in the labour legislation ever since it was excluded from the Constitution in the early Eighties, after the emergence of the Solidarnosc movement in Poland. Many Chinese scholars, as well as ACFTU officials, have been advocating the amendment of the existing regulations or the adoption of a specific law to officially recognize the right to strike. In June 2010, after the attention given by the Chinese media to the Honda strikes, a leading scholar went as far as to declare that “if the workers do not have the right to strike, they are not respected.” Other observers have argued that implementing a law on strike in China at this juncture would contribute to State regulation and, paradoxically, restrict workers' ability to use industrial action to improve their working conditions.

The debate on the 2007 Labour Contract Law was polarised around two contending schools of thought: the first, often identified with professor Chang Kai of People's University (an institute traditionally close to the Party bureaucracy), advocated a greater involvement of the State in labour relations in order to balance the unmitigated power of management and market; the second, led by professor Dong Baohua of East China University of Political

Science and Law, argued instead for a better implementation of the existing laws and a market regulation of labour. In 2006 and 2007 Chang and Dong engaged in an increasingly public debate with their opinions often appearing on both domestic and international media.

Workers activists: If strikes are very common in China, activists who try to take workers dissatisfaction further in the direction of an independent labour movement are often harshly punished by the authorities. Emblematic is the story of Zhao Dongmin, a labour activist who recently has been sentenced to three years in jail for “gathering a crowd to disrupt social order”. Zhao was first arrested in August 2009 after organising 380 workers from about twenty State-owned enterprises in Shaanxi province to form a labour rights group to monitor the restructuring of SOEs and report corruption and abuses of power. The group was officially banned in July 2009.

Domestic Labour NGOs: According to the available evidence, in mainland China there are a few dozens grassroots labour NGOs. Unfortunately, the only data are based on personal estimates of people who work in the sector. For example, Liu Kaiming, founder and Director of the Shenzhen-based Institute of Contemporary Observation (*dangdai shehui guancha yanjiusuo*), told *Nanfang Dushibao* in 2007 that about fifty labour NGOs were active in the Pearl River Delta with more than 200 people involved totally. Roughly at the same time, Huang Yan from the South China Normal University told *Nanfengchuang* that in the Delta there were only about thirty such organizations, each employing two or three activists.

In some cases, these organizations are established by former workers and can only survive thanks to a substantial financial support from international trade unions and other foreign foundations and organizations. The widespread belief is that these labour NGOs are harbinger of independent unionism in China or little short of a “Chinese workers self-salvation movement”. The political context they operate in, however constrains their ability to challenge the official narratives about labour rights and often reproduce mainstream, State-produced discourses. Despite these limitations, Chinese labour NGOs are an invaluable source of information and public awareness about Chinese labour both for international organizations and the media.

International trade unions and NGOs: Critical voices are far stronger abroad than they are in China. The Hong Kong civil society is particularly active. Some of the most influential voices include the China Labour Bulletin, an NGO founded by Han Dongfang, a former labour leader exiled in the early Nineties for his role in the Tiananmen protests, and the Student and scholars Against Corporate Misbehaviour (SACOM), an NGO established by scholars from Hong Kong and the mainland, particularly active in denouncing malpractices in global corporations, primarily Foxconn (the Taiwanese manufacturer of Apple products that employs more than a million workers in mainland China). Other important actors are the international unions, especially the International Trade Union Confederation, that publishes an annual survey of violations of trade unions rights.

3. International Scholarship: an annotated review

International scholars have produced a consistent body of literature on the history of the Chinese labour movement. Most of these studies focus on a specific period of Chinese modern history, as Jean Chesneaux's *The Chinese Labor Movement* (1968), which describe the dawn of the Chinese labour movement in the decade 1919-1927; François Gipouloux's *Les Cent Fleurs a l'Usine* (1986), which analyses workers' role in the Hundred Flowers Campaign; or Elizabeth Perry's *Patrolling the Revolution* (2006) on workers' militias during the Cultural Revolution. Some studies describe the history of the Chinese workers' movement in a longer temporal arch, as is the case of Jackie Sheehan's *Chinese Workers: A New History* (1998) and Elizabeth Perry's *Shanghai on Strike* (1993).

Significant attention has been devoted to the issues of Chinese industrial relations. While some of these studies focus on industrial relations in specific periods of Chinese history, as Bill Brugger's *Democracy and Organisation in the Chinese Industrial Enterprise, 1948-1953* (2010), others tackle more general issues related to organisation and power relations inside the work-units in the pre-reform and early reform eras, as Andrew Walder's *Communist Neo-traditionalism* (1988); Xiaobo Lü and Elizabeth Perry's (eds) *Danwei: The Changing Chinese Workplace in Historical and Comparative Perspective* (1997); Sally Sargeson's "Reworking China's Proletariat" (1999); and Mark Frazier's *The Making of the Chinese Workplace* (2002). More general studies deal with the issue of the labour reform, describing the policy-making processes which led to the demise of the work units and the creation of a labour market in China, for example Luigi Tomba's *Paradoxes of Labour Reform* (2002).

The issue of migrant workers' labour conditions in Chinese factories, as well the impact of the global capital on Chinese labour, are topics of great interest for the international scholar community, as well for the media. In this regard, Anita Chan's collection of workers' accounts in *China's Workers Under Assault* (2001) has become a classic reading. Part of this literature has a strong focus on gender, as is the case with Ching Kwan Lee's *Gender and the South China Miracle* (1998) Pun Ngai's *Made in China* (2005) and Tamara Jacka's work, especially *Rural Women in Urban China* (2005). Other studies specifically tackle the issue of the role of international capital in the worsening of labour conditions in China in general terms, as Mary Gallagher's *Contagious Capitalism* (2005), or adopting specific companies as case studies, as Anita Chan's edited volume on *Walmart in China* (2011).

Much has been written about worker protests and contentious labour politics over the last decade. Probably, the most influential book on the topic is Ching Kwan Lee's *Against the Law* (2007), which underlines the different pattern of mobilisation among migrant workers in Shenzhen and laid-off workers in Liaoning. Other studies focus on the dynamics of resistance by specific social groups, especially laid-off workers, as Yongshun Cai's *State and Laid-off Workers in Reform China* (2005) and William Hurst's *The Chinese Worker after Socialism* (2012), or migrant workers, as Chris King-chi Chan's *The Challenge of Labour in China* (2010). There is also a growing body of literature focusing on the Chinese official union, from Lee Lai To's classic *Trade Unions in China, 1949 to the present* (1986) to Tim Pringle's *Trade Unions in China* (2011).

Other studies focus on legal issues related to Chinese labour laws and regulations, especially labour disputes resolution, but this kind of studies can hardly keep up with the very rapid change in Chinese legal landscape. A more recent field conjugates labour studies with media studies. Worth mentioning in this regard are Sun Wanning's *Maid in China* (2009) on production and consumption of popular media and domestic workers and Jack Linchuan Qiu's *Working-Class Network Society* (2009) on the use of new media among workers. Finally, some recent studies have placed Chinese labour in a comparative perspective, including Dorothy Solinger's *States' Gains, Labor's Losses* (2009).

4. Media Representation

Chinese labour issues are widely covered in the international media, especially when major companies are involved in scandals related to labour conditions in their Chinese

suppliers' factories. Household brands like Nike, Walmart, MacDonald, Pizza Hut and Apple were all involved in Chinese labour related scandals which were reported by the international media in the past few years. Such global media outlets as the *New York Times*, the *Wall Street Journal*, *The Guardian* and *The Economist* regularly report about Chinese labour disputes and occasionally produce more in depth analysis pieces about the changes in the Chinese labour market. In light of this widespread reporting the "China price" has long become one of the main concerns for the public opinion in many western countries.

After major events such as the recent Honda strikes and the Foxconn incidents, international media started promoting a narrative which was mainly framed in terms of an "awakening" of Chinese workers. Such headlines as "The rising power of the Chinese worker" (*The Economist*), "The rise of a Chinese worker's movement" (*Businessweek*), "An independent labor movement stirs in China" (*The New York Times*) have become increasingly common and the *Time* magazine went as far as to designate the common "Chinese worker" as the person of the year in 2009.

Numerous reporters have also published books on the topic. The most prominent were *The China Price* (2008), written by *Financial Times* editor Alexandra Harney, and *Factory Girls* (2008), authored by *Wall Street Journal's* Leslie Chang. While Harney's book is more analytical, Chang's volume focuses on the life of two female migrant workers in Dongguan whose life the author followed for a few years. Both books are based on extensive field research undertaken by the authors and offer the reader two different but equally vivid portraits of workers' life in the "world factory".

Many other books written by foreign journalists deal with the issue of Chinese labour in some of their chapters or sections. Among them, Peter Hessler's *Oracle Bones* (2007) describes a visit of the author to Shenzhen in the late Nineties. *Country Driving* (2010), by the same author, has an entire section dedicated to the vicissitudes of a small factory and its workers in a city not far from Wenzhou in Zhejiang province. Philip Pan's *Out of Mao's Shadow* (2009) describes in detail a strike by SOE workers in Liaoyang city which took place in 2002. Ian Buruma's *Bad Elements* (2003) offer a series of portraits of prominent Chinese labour activists.

International NGOs and labour groups also actively bring Chinese labour issues to the attention of the international media, with organisations China Labour Bulletin (CLB), China Labour Watch (CLW) and Student and scholars Against Corporate Misbehaviour (SACOM) often quoted by journalists as their sources. Occasionally, the leaders of these organisations

contribute to the public debate writing their own op-ed on prominent newspapers and magazines. The websites of these organisations are precious sources of information for anybody interested in Chinese labour issues.

Appendix II

Pilot Research: Awareness and Perceptions of the Law among the Migrant Workers in a Village in Hunan Province

Whoever wants to undertake a research about Chinese workers has to confront a great number of methodological and practical problems, especially for what concerns data collection. A foreign researcher has to face a couple of additional problems, that is to say how to approach these young people and how to establish the climate of confidence which is necessary to conduct an interview. How to clear these hurdles? Seeking help from the official union is not feasible for “political” reasons; going through grassroots labour NGOs and law firms inevitably lead to biased samples; conducting interviews directly in the factories collides with the obstruction from the management and the distrust of the workers.

Driven by these considerations, during the 2011 Spring Festival, accompanied by a local person, I visited one county in the countryside around the city of Jishou, Hunan province, starting point of massive migrations towards the coastal cities. The idea was to conduct the interviews directly in the countryside, in a period when many migrants go home to spend the holidays with their families. Without any statistical claim, my aim was to experiment the creation of a first focus group for a research that in the future could be replicated on a wider scale, in various villages in more than one province.

Within the space of a one week, I visited every home in a village in a mountainous area not far from Jishou, conducting twenty in depth interviews with local migrant workers, fourteen men and six women, aged between seventeen and forty-one (four were born in the Seventies, eight in the Eighties and eight in the Nineties). Every interviewee had no more than a junior high diploma (five had just an elementary school diploma) and for the most part

(seventeen cases) they worked in the secondary industry, with eight of them working at the productionline in factories in the Pearl River Delta and nine employed in plants in the area of the Delta of the Yangtze. Despite the reduced size and the unscientific nature of this focus group, these interviews highlighted some elements which should be further researched.

First of all, no one of the interviewees had never had any previous experience with the law, neither directly knew anyone, colleagues, friend or relatives, who had tried to go through legal channels in order to settle a labour dispute. When asked “who would you seek in the event of a labour dispute?”, the first (and often only) answer invariably was the labour office (*laodongju*). The interviewees perceived the labour office – the lower level in the pyramid of the Chinese bureaucracy charged with the administration of labour – as an efficient entity, a reliable interlocutor able to easily solve their problems. For sure, this is the easiest choice for Chinese workers, since to seek help from the labour office do not require many bureaucratic formalities and, above all, is for free. Still, the reason behind this trust is deeper, arising – exactly as it happens with the petition system – from the myth of the omnipotence and the benevolence of the Chinese government.

Besides trusting labour office, the interviewees seemed to believe in the power of the law as a tool to protect their rights. As many of them stated: “Of course the law is useful! If in a country even the law does not work, what could ever work?” In any case, this belief appears to be based on something like a “blind” confidence, since only four of the interviewees could answer with reasonable certainty my questions concerning fundamental facets of their working life, such as the legal standards for the compensation of overtime work and the basic legal salary in the area where they worked. This implies a complete ignorance of the law, even for that matter issues which directly affect a worker personal and immediate interest. The interviewees seemed to be extremely trusting towards their employers and in more than one case identified the factory’s internal regulations (*guizhang*) with the labour law, believing without asking any question what they were told by the managers.

On the other hand, it could not be otherwise, since the main source of legal information for my interviewees was nothing more than the “hearsay” (*tingshuo*). Only one worker said that he had read some labour related laws and regulations on a booklet that he had received by official union activists outside the railway station, while other two workers said that they had bought some books on the topic. The role of the Internet in disseminating the legal knowledge appears to be largely overstated too: the vast majority of the interviewees claimed to surf the web just to chat with friends, watch some movies or play videogames. Just two of them were

able to point out a favourite website and those who claimed to use the Internet to read news (*kan xinwen*) admitted that they mostly read news related to the entertainment world (*yule*). Just in a couple of cases, the interviewees claimed to have used the Internet to look for information about labour laws and regulations. Sometimes my interviews assumed surreal contours, as in the case of this eighteen years old boy who at the time had been working for one year in a Shenzhen factory:

Q: Does your employer pay your social security?

A: No.

Q: Have you ever thought about asking him to pay it?

A: They told me that it is not important.

Q: But what is your opinion? Is social security useful or not?

A: They told me that it is useless, but I never used it so I do not know how to ask.

Q: Have you ever thought about looking for information on social security on the web?

A: I never thought about it.

If the Internet does not act as a social catalyst, what do these workers think about those organizations that claim to represent them? Even in this case, these interviews held some surprises. First of all, the interviewees not only did not know the official union, the All China Federation of Trade Unions, but, except for four cases, they did not even know the meaning of the word “labour union” (*gonghui*), with a worker comparing the trade union to a student association (*xueshenghui*). The few that heard about it have just a vague idea of what a trade union should be, but at the same time voiced a certain mistrust towards the ACFTU as a representative of workers’ rights and interests. On the other hand, grassroots labour NGOs do not fare any better, since no one among the interviewees had ever heard about the existence of such no profit entities. A couple of workers even mentioned private bodies who provided legal assistance for a fee. “There are too many cheaters around”, said one of the boys, answering one question on this topic.

Another aspect on which the interviewees seemed to have many doubts is the issue of the strikes (*bagong*). Even if they did not appear to have a clear idea if the strike is a legal or illegal strategy, the vast majority of the interviewees admitted to have taken part in a labour stoppage in the past. According to these interviews, they did not perceive the strike as a risky strategy, on the contrary, they felt that it was perfectly “reasonable” (*heli*). Among my interviewees, only three people claimed that they would not take part in a strike no matter what, considering it an useless method. Particularly interesting is the fact that the interviewees invariably saw the strike as a tool to protect already existing rights (the right to the legal minimum salary, for example) or to pretend little material improvements (as the possibility of

resting in a hot day or the installation of air-conditioners in their dormitories), never as a way to exact new rights.

This pilot research was more problematic than expected, especially for the difficulties encountered in individuating and approaching potential interviewees. Even during the Spring Festival, when they go home for a couple of weeks, these young workers chose to spend their days in Internet Cafes or in other entertainment avenues in the nearest city and not in their home village. Nevertheless, despite the small size and statistical irrelevance of the focus group, these interviews underlined a series of fundamental questions.

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Estratto per riassunto della tesi di dottorato

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Ciclo: XXV

Titolo della tesi : Labour and Rights in Contemporary China: Beyond the Hegemonic Discourse

Abstract:

Through an extensive fieldwork, this research aims at answering one fundamental question: in the Chinese case, how to reconcile the narrative of a State which promotes a strong discourse on labour and rights with a reality in which workers are blatantly exploited? To provide an explanation to this apparent paradox, this dissertation highlights the importance of analysing the dialectic tensions between the various actors involved in the production of such discourse, underlining their different agendas. In spite of the hugeness of the task, this dissertation wants to be a first pace in the direction of a better comprehension of these dynamics. To achieve this goal, it offers a series of perspectives on how in China the State, the official union, the civil society organizations and the workers interact with each other to produce a very peculiar narrative of labour and rights, a narrative which unfortunately is rarely matched by reality.

Attraverso un'estesa ricerca sul campo, questa tesi si propone di rispondere ad una domanda fondamentale: come conciliare la narrazione di uno Stato cinese che promuove un forte discorso su lavoro e diritti con una realtà in cui i lavoratori sono sfruttati senza scrupoli? Per spiegare questo apparente paradosso, questa ricerca sottolinea l'importanza di analizzare le tensioni dialettiche tra i vari attori coinvolti nella produzione di questo discorso, mettendo in luce le loro differenti priorità. Pur riconoscendo la portata di una tale impresa, questa tesi vuole essere un primo passo verso una migliore comprensione di queste dinamiche. A questo fine, essa offre una serie di prospettive su come in Cina lo Stato, il sindacato ufficiale, le organizzazioni della società civile e i lavoratori interagiscono nel produrre un discorso su lavoro e diritti molto particolare che raramente trova riscontro nella realtà dei fatti.

Firma dello studente
