

**LEGAL CULTURE OF MIGRANT
CONSTRUCTION WORKERS IN CHINA**

by

Juan Li

M. of International Business, The University of Melbourne, 2009

MBA, Wuhan University, 2005

B. Law, Zhongnan University of Economics and Law, 2000

B. Finance, Zhongnan University of Economics and Law, 2000

A DISSERTATION SUBMITTED IN PARTIAL FULFILLMENT OF
THE REQUIREMENTS FOR THE DEGREE OF

DOCTOR OF PHILOSOPHY

in

THE FACULTY OF GRADUATE AND POSTDOCTORAL STUDIES

(Law)

THE UNIVERSITY OF BRITISH COLUMBIA

(Vancouver)

June 2017

© Juan Li, 2017

Abstract

In the past more than three decades, migrant workers have become an increasingly significant force in promoting social and legal changes in China. As such, their legal culture is worthy of studying for many reasons. This study focuses on the migrant construction workers' values, ideas, opinions, and attitudes with regard to the general legal system and legal reform in China, especially with respect to the three important aspects of employment relations, including labour contracts, labour dispute resolution, and trade unions, in the context of market economic reform and globalization. Based on an analysis of primary data collected from fieldwork undertaken in Hubei Province, a less developed province in central China, this study explores that imported Western legal norms, such as rule of law, rights, contract, litigation, trade unions, etc., so far, have limited influence on the popular legal culture of Chinese migrant workers, at least in the construction industry; while the traditional local values in China, such as family ethic, morality, and harmony, still play a dominant role in their daily lives.

Preface

This dissertation is original, unpublished, independent work by the author, Juan Li. The fieldwork reported in the dissertation was covered by UBC Ethics Certificate number is H14-02395.

Table of Contents

Abstract.....	ii
Preface.....	iii
Table of Contents.....	iv
List of Tables	vii
List of Figures.....	viii
Acknowledgements.....	ix
Dedication.....	x
Chapter 1 Introduction.....	1
1.1 Overview.....	2
1.2 The Main Issues.....	7
1.2.1 Legal Culture.....	7
1.2.2 Migrant Workers in China.....	9
1.2.3 New Generation Migrant Workers.....	10
1.2.4 Migrant Construction Workers.....	12
1.3 The Significance.....	14
1.3.1 Selective Adaption & Local Knowledge.....	14
1.3.2 Minor Social Group & Increasing Labour Disputes.....	17
1.4 Fieldwork and Methodology.....	22
1.4.1 Recruiting Criterion.....	22
1.4.2 Hometown of Plasterers.....	26
1.4.3 Methodology – Oral History.....	29
1.4.4 Limitations.....	31
Chapter 2 Literature Review.....	34
2.1 Introduction.....	34
2.2 Legal Transplant Theory VS Social Theories of Law.....	36
2.2.1 Legal Transplant Theory.....	36
2.2.2 Social Theories of Law.....	37
2.2.3 Debate on Legal Transplant Theory.....	39
2.3 Legal Culture of China.....	42
2.3.1 Resistance to Rule of Law.....	42
2.3.2 Traditional Legal Culture of China.....	45
2.3.3 Ambivalent Attitude of the Regime.....	52
2.3.4 Three Theoretical Models of Legal Evolution in China.....	55
2.4 Internal Migration in China.....	58
2.4.1 Political and Legal Changes.....	58
2.4.2 Watershed.....	61
2.4.3 Rights Violations and Discriminations.....	64

	2.4.4	Migration Experiences.....	68
	2.4.5	Labour Mobility and Spatial Mobility.....	69
	2.4.6	Physical and Physiological Health.....	71
	2.4.7	Labour Disputes and Protests.....	73
	2.4.8	Left-Behind Children and Aging Migrants.....	77
	2.5	Summary.....	78
Chapter 3		Labour Contract.....	80
	3.1	Introduction.....	80
	3.2	Background.....	81
	3.2.1	Heated Debate before Enforcement.....	81
	3.2.2	Major Changes in Labour Contract Law.....	83
	3.2.3	Individual Contract or Collective Contract.....	85
	3.2.4	Impacts of Labour Contract Law.....	86
	3.3	Subcontracting System.....	90
	3.3.1	Lu Ban Temple – Guild System in Ancient China.....	91
	3.3.2	State-Owned Construction Enterprises since 1949.....	92
	3.3.3	Lubuge Project in 1980.....	94
	3.3.4	Autonomous System Built by Xiaogan People.....	97
	3.4	Migrant Construction Workers’ Legal Culture Regarding Labour Contracts.....	100
	3.4.1	Labour Contracts: Important or Unnecessary?.....	102
	3.4.2	The Most Influential Factor – Host City.....	104
	3.4.3	Generation Differences.....	106
	3.4.4	Beijing – Labour Contract is Compulsory.....	111
	3.4.5	Guangdong – Site Managers Covered by Labour Contracts.....	114
	3.4.6	Northeast – Odd work, No Labour Contracts.....	116
	3.4.7	More Job Opportunities.....	119
	3.4.8	Unwritten Contract – “We Had a Deal”.....	120
	3.5	Summary.....	123
Chapter 4		Labour Disputes.....	128
	4.1	Introduction.....	128
	4.2	Background.....	129
	4.2.1	Sharp Rise of Labour Disputes and Protests.....	130
	4.2.2	The Main Causes of Labour Disputes.....	133
	4.2.3	The Nature of Labour Disputes.....	135
	4.2.4	Organized Strikes and Growing Labour Shortage.....	138
	4.2.5	The Labour Dispute Resolution System.....	141
	4.3	Migrant Construction Workers’ Legal Culture regarding Labour Disputes.....	147
	4.3.1	Major Cause of Labour Disputes – Wage Default.....	148
	4.3.2	Much Less Wage Default since 2003.....	151
	4.3.3	Wage-Deposit System in the Construction Industry.....	153
	4.3.4	Industrial Injury Compensation.....	157
	4.3.5	The Nature of Labour Disputes in Construction Industry.....	161
	4.3.6	Major Resolution Means – Conservative, Informal and	

	Violent.....	165
	4.3.7 Disorganized and Cellular Debt Dispute in Hometown....	169
	4.3.8 Organized Labour Protests in Host Cities.....	171
	4.3.9 Aggressive and Violent Rural Youth.....	174
	4.3.10 It Is Not Worth Going to Court or Arbitrator.....	177
	4.3.11 Local Government is the Major Debtor in Some Regions.....	179
	4.3.12 Disappointing toward Their Hometown – Hubei.....	181
4.4	Summary.....	183
Chapter 5	Trade Unions.....	188
5.1	Introduction.....	188
5.2	Background.....	190
	5.2.1 Chinese Trade Unions’ Structure and Roles.....	191
	5.2.2 Chinese Trade Unions’ Dilemma.....	199
	5.2.3 Chinese Trade Unions’ Reforms and Transitions.....	205
	5.2.4 Concentrated Recruiting Migrant Workers Campaign.....	214
5.3	Migrant Construction Workers’ Legal Culture Regarding Trade Unions.....	218
	5.3.1 What Is That? - The Major Attitude to Trade Unions.....	219
	5.3.2 Invisible – The Trade Unions’ Role in Labour Disputes...	223
	5.3.3 Association of Co-villagers.....	226
5.4	Summary.....	229
Chapter 6	Conclusion.....	231
6.1	Introduction.....	231
6.2	Perceptions on Rule of Law and Rights.....	232
	6.2.1 Law Has Nothing to Do With Us.....	232
	6.2.2 Only Officials and Rich People Have Quanli, We Don’t Have Any.....	236
6.3	Migrant Construction Workers’ Legal Culture regarding Three “Markers”.....	238
	6.3.1 Labour Contracts are Unimportant and Unnecessary.....	238
	6.3.2 Labour Disputes Solutions are Conservative, Informal, and Violent.....	240
	6.3.3 Trade Unions are Invisible.....	242
	6.3.4 The Main Influential Factors.....	243
6.4	Summary.....	244
6.5	Suggestions for Future Research.....	246
	Bibliography.....	248
	Appendix 1, Undeveloped National Park.....	281
	Appendix 2, Basic Information of Participants.....	284

List of Tables

Table 3.1: Basic Information of the Interviewees Covered by Labour Contracts.....	101
Table A.1: Basic Information of Participants	284

List of Figures

Figure 5.1: Reconstruction of the ACFTU after 1949	197
Figure 5.2: A Simplified Diagram of the Decision-Making Structure of SOE in China	199
Figure A.2: Age Column of Participants	286
Figure A.3: Educational Background Column of Participants	287
Figure A.4: Educational Attainment based on Respondent Decade of Birth of Participants	289
Figure A.5: Working Regions of Participants.....	290

Acknowledgements

I would like to deeply thank my supervisor, Dr. Pitman B. Potter, for his years of generous support and kind help. I also want to appreciate my supervisory committee members, Dr. Amy Hanser and Dr. Yves Tiberghien, for their significant help and continuous encouragement. Research for this study was supported for the Faculty of Law of UBC and the Faculty of Graduate and Postdoctoral Studies, for which I am sincerely thankful. In particular, I would like to thank Rozalia Mate and Joanne Chung at the Faculty of Law for their administrative support. I would also like to thank my editor, Mark Tags, for his language and formatting editing. To all the migrant workers that I have met and talked with in China, no matter whether they accepted my invitations to participate this study or not, no matter whether the data collected from their interviews being adopted in this study or not, I dedicate my deep thanks. Last but not most, I also would like to thank my family: my parents, my husband, and my two children. Without their deep understanding and selfless support, it is impossible for me to go through this long and tough journey. I remain responsible for the errors and omissions that no doubt remain in this study.

Juan Li

Wuhan, China

January, 2017

Dedication

For my dad, Li Xuetao, who gave me generous and endless love.

I miss you forever.

Chapter 1 Introduction

On a cold winter's day in January 2015, I met Peng, a young and strong migrant construction worker, at a small restaurant in his hometown of Shuangfeng Town, Xiaogan, Hubei Province, China. Born in 1989, Peng looked as trendy as his contemporaries in urban China. At our meeting, Peng told me about his straightforward way to resolve labour disputes: "Firstly, I would talk with him nicely, saying some excuses that I really need money now; for example, I will take the driver's license test, or my mom is sick. After some nice talking, if he still refuses to pay me back, I would better use violence." I asked Peng, "Do you consider turning to some authorities or legal institutions for help, for instance, going to court, taking mediation or arbitration, or going to Labour Bureau?" Peng responded without any hesitation, "I would better to use violence. Settle the problem in my own way. The law is useless and troublesome!"¹

Although this was not the first time that I heard such a statement during my fieldwork, at that moment I was slightly taken aback, especially considering that the source was such a young man. Peng looked at my face, and became a little excited. He raised his voice, and asked, "So what? I won't beat him, nor abuse him! I would only take him back to my home, and make him stay there, till he pays me!" Somewhat surprised, I could not help

¹ Juan Li, (January 21, 2015) Personal Interview.

but ask, “Do you know this is illegal?” Peng shrugged, “It is OK here! It is useful, and effective! The problem can be totally settled!” He became even more excited, “Then you tell me, what else can I do? Law is useless! Shall I simply accept the bad luck? No way! Definitely not!”²

1.1 Overview

Since the Opium War in 1840, China involuntarily started a journey towards modernity.³ The encounter of East and West wrought fundamental changes to Chinese society.⁴ The Chinese traditional local values, including traditional legal culture, were challenged.⁵ In the following centuries, various cultural conflicts continued during the process of legal development in modern China. Even today, although China’s legal system has developed substantially, conflicts in legal culture are still evident.⁶ The tension between imported Western norms and traditional local values in China is a crucial dynamic in understanding the development of the legal system in modern China; it is also a point worth

² Juan Li, (January 21, 2015) Personal Interview.

³ Yeo-Chi King, “Construction of China’s Modern Civilization – On China’s Modernization and Modernity,” in *Economic Democracy and Economic Liberty*, ed. Liu Junning (Shanghai: Sanlian Bookstore Press, 1998), 42.

⁴ Quanxi Gao, Wei Zhang, and Feilong Tian, *The Road to the Rule of Law in Modern China* (Berlin, Heidelberg: Springer Berlin Heidelberg, 2015), vii - viii.

⁵ Zhiping Liang, *Seeking Harmony in Natural Order, Research on Chinese Traditional Legal Culture (Xunqiu Ziran Zhixu zhong de Hexie: Zhongguo Chuantong Falv Wenhua Yanjiu)* (Beijing: China University of Political Science and Law press, 2011), 2002; also Gao *et al.* supra 4.

⁶ Zhongqiu Zhang, *Comparative Studies of Chinese and Western Legal Cultures (Zhongxi Falv Wenhua Bijiao Yanjiu)* (Beijing, Law Press, 2009), p. 1.

comprehending for the ongoing legal reforms within the context of globalization.⁷

Recognizing these dynamics, and consequent tensions, raises the following questions: How have liberal Western norms and values – for instance, the rule of law, right, contract, litigation, etc. – been adapted into the Chinese society? How has the traditional legal culture of ordinary Chinese people been changed, or preserved? What are ordinary Chinese people’s values, ideas, opinions and attitudes regarding the law and legal system in modern China, after more than 170-years of social and legal transformation? How do Chinese people resolve the conflicts they encounter in their daily lives?

These are big and difficult questions, and some of them may be ultimately unanswerable; certainly, none of them can be answered conclusively. Nevertheless, as Paul Cohen suggests, it is essential to keep asking these questions.⁸ As such, this study aims to explore a key aspect of popular legal culture in modern China. Of course, no single study can present a comprehensive picture of popular legal culture in China, which at times is a chaotic mix of contradictory ideas, symbols, and practices.⁹ Instead, this study focuses on an important social group, migrant construction workers. It explores their legal culture,

⁷ Chenjun You and Yizhou Ye, “International Conference on “Modernity and Chinese Legal Culture” Held at Renmin University of China Law School,” *Frontiers of Law in China* 8.4 (2013): 862.

⁸ Paul A. Cohen, *China Unbound: Evolving Perspectives on the Chinese Past*, (London, Routledge, 2003), 2-5.

⁹ Perry Link, Richard P. Madsen, and Paul G. Pickowicz, “Introduction,” in *Unofficial China, Popular Culture and Thought in the People’s Republic*, eds. Perry Link, Richard P. Madsen, and Paul G. Pickowicz (Westview Press, Inc., 1989).

and uses this social group as lens to look through the China's migrant workers' legal culture. In this context, "legal culture" refers to migrant workers' sense of collective values, ideas, opinions and attitudes regarding the law and legal system in China, within the context of globalization and economic reform.¹⁰ As one of the major driving forces of social and legal changes in China, migrant workers are reshaping the landscape of Chinese society because of their large numbers and great contribution to the economic development.¹¹ The center of gravity in China's working class has shifted, and will continue to shift, to these workers.¹²

In reality, migrant workers' legal culture varies greatly due to a number of variables, including their hometowns, working industries, age, gender, educational backgrounds, host cities, and so forth. This study simplifies this complexity by selecting two recruiting criteria: the migrant workers' hometown and their working industry. All of the human subjects of this study were born and grew up in the same town: Shuangfeng Town, Xiaochang County, Xiaogan City, Hubei Province, China. It is a typical rural area in the central part of China. All participants' working experiences are mainly in the construction

¹⁰ Lawrence M. Friedman, "Is There a Modern Legal Culture?" *Ratio Jurisprudence* 7.2 (1994): 117.

¹¹ Xin Frank He, "Regulating Rural-urban Migrants in Beijing: Institutional Conflict and Ineffective Campaigns," *Stanford Journal International Law* 39.2 (2003): 177; Aaron Halegua, "Getting Paid: Processing the Labour Disputes of China's Migrant Workers," *Berkeley Journal of International Law* 26.1 (2008): 254; Paul Thompson, "The Voice of the Past," in *The Oral History Reader*, eds. Robert Perks and Alistair Thompson (London: Routledge, 2006).

¹² Yunchao Zhu, "Workers, Unions and the State: Migrant Workers in China's Labour-intensive Foreign Enterprises," *Development and Change* 35.5 (2004): 1011.

industry. Since the concept of legal culture is broad, this study identifies three important aspects of employment relations as three “Markers”, namely “labour contract,” “labour disputes resolution,” and “trade union,” as three “Markers” of migrant construction migrant workers’ legal culture. The migrant construction workers who come from a typical rural area in China, their experiences, thoughts and feelings regarding these three “Markers” can offer a window into how they resolve conflicts by drawing upon their own legal culture.

Among the labour regulations and policies in China, this study primarily explores migrant construction workers’ legal culture regarding three regulations; namely Labour Contract Law,¹³ Labour Dispute Mediation and Arbitration Law,¹⁴ and Trade Union Law.¹⁵ Based on more than two years of pre-fieldwork and fieldwork in central China, this study draws on 34 in-depth interviews with migrant construction workers all from a same hometown. It elaborates these migrant construction workers’ ideas, values, opinions, and attitudes toward China’s legal system, mainly regarding three aspects of employment relations, namely labour contract, labour disputes resolution, and trade unions. It concludes that the imported Western legal norms, such as rule of law, rights, contract, litigation, and trade unions, have, thus far, had limited influence on the popular legal

¹³ Labour Contract Law of PRC, http://www.npc.gov.cn/wxzl/gongbao/2013-04/15/content_1811058.htm.

¹⁴ Labour Dispute Mediation and Arbitration Law of PRC, http://www.gov.cn/flfg/2007-12/29/content_847310.htm.

¹⁵ Trade Union Law of PRC, http://www.npc.gov.cn/wxzl/gongbao/2001-10/29/content_5277078.htm.

culture of Chinese migrant construction workers, while local values in China, such as family ethic, morality, and harmony, still play a dominate role in their daily lives.

This study aims to make three contributions to the literature. First, it examines a piece of popular legal culture in China, providing some valuable “local knowledge,”¹⁶ and helps to convey what Chinese people really think and feel about their society and legal system. Second, it demonstrates the tensions between Western liberal norms and deeply embedded local values.¹⁷ Third, it elaborates the experiences and perspectives of Chinese migrant workers who have become a major driving force in China’s social and legal changes.¹⁸

This dissertation is organized into six chapters: Introduction, Background, Labour Contract, Labour Dispute Resolution, Trade Union, and Conclusion. The Introduction mainly responds to issues of what, why and how; more specifically, what are the main issues of this study, why this study is meaningful, and how was this study, especially its fieldwork, undertaken. The Background focuses on the field of legal transplants, legal culture, and migrant workers in China, and explores the “gap” that this study fills. From

¹⁶ Clifford Geertz, *Local Knowledge: Further Essays in Interpretive Anthropology* (New York: Basic Books, 1983).

¹⁷ Pitman B. Potter, *China’s Legal System* (Malden, MA; Cambridge, UK: Polity, 2013); Pitman B. Potter, “Legal Reform in China: Institutions, Culture, and Selective Adaptation,” *Law and Social Inquiry* 29.2 (2004): 465.

¹⁸ Thompson, “The Voice of the Past,” *supra* n. 11.

Chapter 3 to Chapter 5, the study explores migrant construction workers' legal culture with regard to the three "Markers" – labour contract, labour dispute resolution, and trade unions. In addition, related literature is reviewed, some background of the context is introduced, and case studies are depicted. Finally, Chapter 6 provides the conclusion, and suggests possibilities of further studies in this area.

1.2 The Main Issues

1.2.1 Legal Culture

Radcliffe Brown claims: "The center of gravity of legal development lies not in legislation, nor in juristic science, nor in judicial decision, but in society itself."¹⁹ In order to understand how the law, legal system, and legal institutions work within the fabric of daily life, the concept of "legal culture" was introduced, and plays as an important intervening variable, a mechanism for transforming norms of popular culture into legal dress and shape.²⁰ According to Friedman, legal culture means the ideas, values, attitudes, and opinions that people in some society hold, with regard to law and legal system.²¹ Potter explores the notion that legal culture reflects the belief systems of the individuals and groups whose behavior contributes to the performance of legal institutions.²²

¹⁹ Radcliffe Brown, *Structure and Function in Primitive Societies* (London: Cohen and West, 1952), 181.

²⁰ Friedman, *supra* n. 10.

²¹ *Ibid.*

²² Potter, *China's Legal System*, *supra* n. 17; Potter, "Legal Reform in China: Institutions, Culture, and Selective Adaptation," *supra* n. 17.

Ehrmann explores legal culture essentially as a variant on political culture, though in the realm of law.²³ Yngvesson argues that legal culture is a contested terrain on which understandings of fundamental cultural symbols, such as community, neighborhood, and rights are challenged and reinterpreted.²⁴ Liang underscores that legal culture is a specific spirit of law, rooted in a certain style of culture. A certain style of culture is established and formed in long-term historical experiments, and is also the result of people's selections which indicate not only their attitudes, but also thoughts about their lives.²⁵

According to Nelkin, the concept of legal culture reminds us that aspects of law normally come in packages of one sort or another, and illustrates that features of law are themselves embedded in larger frameworks of social and cultural structure.²⁶ Friedman believes that legal scholars should figure out the influence of society on the legal system, and the influence of the legal system on society; in other words, the sources of law, and the impact of law. The concept of legal culture has a central place in both of these tasks.²⁷

In this sense, legal culture represents an intervening link between social forces and legal

²³ Henry Walter Ehrmann, *Comparative Legal Cultures* (Englewood Cliffs, N.J.: Prentice-Hall, 1976), 6.

²⁴ Barbara Yngvesson, "Inventing Law in Local Settings: Rethinking Popular Legal Culture," *Yale Law Journal* 96 (1989): 1689.

²⁵ Liang, *supra* n. 5.

²⁶ David Nelken, "Towards a sociology of legal adaptation," in *Adapting Legal Culture*, eds. David Nelken and Johannes Feest (Oxford and Portland, Oregon, Hart Publishing, 2001), 13.

²⁷ Friedman, *supra* n. 10.

system.²⁸ Hence, a legal reform is doomed to failure if it does not take into account legal culture,²⁹ and important changes in law would be impossible, unless preceded by cultural change.³⁰ The study of legal culture is one of the powerful responses to the questions about the performance of formal legal institutions and legal transplants. It helps to illustrate how a formal legal institution works in a certain society, and why it is not as effective as expected.

1.2.2 Migrant Workers in China

From the end of 1978, the adoption of the Household Contract Responsibility System has freed tens of millions of farmers from being confined to limited plots of land, and has resulted in a significant surplus of rural labourers. Since the 1980s, large numbers of peasants have migrated to the southeast coastal cities in order to find work despite regulatory restrictions.³¹ By the end of 2015, there were 277.47 million migrant workers across China.³² They have become one of major driving forces in China's social and legal changes, and have been reshaping the landscape of Chinese society.³³

²⁸ Lawrence M. Friedman, "Law, Lawyers, and Popular Culture," *The Yale Law Journal* 98 (June, 1989): 1584.

²⁹ *Ibid*, 1579.

³⁰ Lawrence M. Friedman, "Legal Culture and Social Development," *Law and Society Review* 4 (1969): 29.

³¹ Jie Shen, *Labour Disputes and Their Resolution in China* (Oxford: Chandos, 2007), 13-16; Liren Shen, *Chinese Migrant Workers (Zhongguo Nongmingong)* (Beijing, Democracy & Construction Press, 2005).

³² National Bureau of Statistics, *Investigative Report on the Monitoring of Chinese Migrant Workers in 2015*, http://www.stats.gov.cn/tjsj/zxfb/201604/t20160428_1349713.html. Accessed on June 9, 2017.

³³ He, *supra* n. 11.

In the English scholarly literature, migrant workers in China are also referred to as rural-to-urban migrant workers, peasant workers, internal migrant workers, and the floating population. In Chinese, the term is Nongmingong or Mingong. This term is a combination of “Nongmin” (peasant) and “Gong” (worker), which clearly indicates this group’s double and ambiguous identity.³⁴ According to Zheng and Huang, a migrant worker is a labourer who has rural household registration, but works in urban areas or in non-agriculture sectors. This special identity is the result of fierce conflict between the Household Registration System and the accelerated industrialization process in China³⁵ Migrant workers tend to be a relatively younger and better-educated labour force in rural China.³⁶ In one of the most profound social developments in modern China, migrant workers are reshaping the landscape of Chinese society.³⁷

1.2.3 New Generation Migrant Workers

The “new generation migrant workers” normally refers to migrant workers born after 1980, and who are older than 16.³⁸ By the end of 2009, the number of migrant workers was 150 million, of which about 100 million could be categorized as new generation

³⁴ Gongcheng Zheng and Ruolian Huang, *Chinese Migrant Workers: Issues and Social Protections (Zhongguo nongmingong wenti yu shehui baohu)* (Beijing: People Press, 2007), 8.

³⁵ *Ibid.*

³⁶ Ling Li, “Towards a More Civil Society: Mingong and Expanding Social Space in Reform-era China,” *Columbia Human Rights Law Review* 149.156 (2001).

³⁷ He, *supra* n. 11; Halegua, *supra* n. 11.

³⁸ Zheng and Huang, *supra* n. 34.

migrant workers, accounting for about 66.7 percent; this number has been increasing year-by-year.³⁹ Due to dramatic social and economic changes in China over the past decades, the new generation has grown up in a different situation than previous generations. For instance, they are the first generation to grow up in prosperity, without worrying about food and shelter, and parents sensitive to the one-child policy pampered many of these individuals. Many of them have never laid down roots, and they tend to be better educated than the elder generation of migrant workers.⁴⁰ According to a national survey, 89.4 percent of new generation migrant workers barely know about farm work, and 37.9 percent have never done any farm work.⁴¹

These different experiences of young migrant workers in China today have created different expectations and attitudes compared to those of the older generation. The older generation of migrant workers was driven by land shortage or poverty in rural areas, while the new generation expects earning opportunities, personal development, and an urban lifestyle.⁴² A report from ACFTU claims that the new generation's sense of

³⁹ ACFTU, "Research Report on the New Generation of Migrant Workers (Guanyu Xinshengdai Nongmingong Wenti de Yanjiu Baogao)," <http://www.chinanews.com/gn/news/2010/06-21/2353233.shtml>. Accessed May 21, 2016.

⁴⁰ China Review News, "Han Changfu, Secretary of Agriculture Ministry Talks about New Generation of Migrant Workers," *China Review News*, February 1 2010, accessed June 6 2015, <http://mag.chinareviewnews.com/doc/1012/1/6/9/101216949.html?coluid=7&kindid=0&docid=101216949&mdate=0201144628>; Mingxin Bi, "Young Migrants Settle for Life in the City," *China Daily*, February 26, 2008, http://news.xinhuanet.com/english/2008-02/26/content_7671827.htm. Accessed June 6 2015,

⁴¹ ACFTU, *Report on New Generation Migrant Workers* (ACFTU, 2010).

⁴² Max Tunon, "Internal Migration in China: Features and Responses," *ILO Asia and the Pacific* 8 (2006), accessed October 10 2016,

collective self-identity is gradually shifting from peasants to workers. Their attitude toward host cities is moving from that of “guests” to “settling down,” with 55.9 percent of new generation migrant workers wanting to settle in the host cities.⁴³ In addition, this group is less tolerant towards bad working conditions, and more sensitive to discrimination. Their demands are shifting from basic working conditions to more equality and even decent work.⁴⁴ They have stronger consciousness of legal rights than older migrant workers and laid-off workers from Sated Owned Enterprises. They tend to resort first to legal activism such as labour arbitration, mediation, and litigation.⁴⁵ In short, they are more like their counterparts in urban China.⁴⁶

1.2.4 Migrant Construction Workers

The Chinese term for the construction industry, Jianzhu Ye,⁴⁷ includes sectors of civil engineering, building development, equipment installation, as well as related survey, design, production, and decoration. Its products are factories, mines, railways, bridges,

www.ilo.org/public/english/region/asro/beijing/download/training/lab_migra.pdf.

⁴³ ACFTU, *supra* n. 41.

⁴⁴ Bi, *supra* n. 40.

⁴⁵ Ching Kwan Lee, *Against the Law: Labour Protests in China's Rustbelt and Sunbelt* (University of California Press, 2007); Jieping Zhang and Yixin Zhu, “Labour Movement in China Requires Independent Trade Unions,” *Asia Week* 24.23 (2010), accessed September 26, 2015, <http://gb.udn.com/gb/blog.udn.com/yensunny/4125202>.

⁴⁶ Andy Xie, “Dismantling Factories in a Dreamweaver Nation,” *Caixin Online*, June 7, 2010, accessed June 6, 2015, http://english.caing.com/2010-06-07/100150460_2.html.

⁴⁷ 建筑业.

ports, roads, pipelines, residential and public facilities, buildings, structures, etc.⁴⁸ Nearly 40 years after initiating market economic reform, China has become not only the world's workshop, but also the world's largest construction site.⁴⁹ By 2009, China had the world's largest construction market, accounting for more than 50 percent of global construction volume, half of concrete consumption, and a third of steel consumption.⁵⁰

In 2013, the total output value of the construction industry reached 15931.3 billion yuan, 6.86 percent of the total national GDP.⁵¹ Not only are Beijing and Shanghai building metropolises, but also many inland cities are investing billions of dollars in infrastructure and real estate development. For instance, Wuhan, the capital city of Hubei Province, plans to invest 2,000 billion yuan on construction, between 2014 and 2019. Chongqing, the fourth municipality in China, spent 296.21 billion yuan on infrastructure, and 301.28 billion yuan on real estate development in 2013.⁵² In 2014, 22.3 percent of migrant workers were working in the construction industry, with a total number of more than 61

⁴⁸ Weixing Jin, *Construction Management Theory and Practice in China in Twenty-first Century (21 Shiji Zhongguo Jianshu Ye Guanli Lilun yu Shijian)*, (Beijing: Construction Industry Press of China, 2006).

⁴⁹ Ngai Pun and Huilin Lu, "Neoliberalism, Urbanism and the Plight of Construction Workers in China." *World Review of Political Economy* 1.1 (2010): 127.

⁵⁰ *Ibid.*

⁵¹ Department of Market Supervision and Research Center, Ministry of Housing and Urban Rural Development of PRC, *Research Report on Reform and Development of China's Construction Industry 2014 (Zhongguo Jianshuye Gaige yu Fazhan Yanjiu Baogao 2014)*, (Beijing: China Construction Industry Press, 2015), 28.

⁵² First Finance Daily, "Many Cities Invest More Than 100 Billion Yuan on Construction, Richer Than a Country. Wuhan Plans to Spend 2,000 Billion Yuan in The Next 5 Years (Woguo Duodi Chengjian Niantou Qianyi Haoke Digu. Wuhan ni Wunian hua 2 Wanyi)," accessed August 31, 2014, <http://finance.sina.com.cn/china/20140219/015718256727.shtml>

million.⁵³ Despite the construction industry's enormous profits, construction workers are poorly protected, both physically and financially. Pun and Lu challenge that construction workers are in the worst situation in China's modern history. Migrant workers face backbreaking workloads, awful work and living conditions, long-term separation from home and family, deception, and immense difficulties in receiving payment.⁵⁴

1.3 The Significance

1.3.1 *Selective Adaption & Local Knowledge*

The Chinese legal culture of migrant workers is worthy of study for many reasons. First, it helps with understanding the popular culture of modern China, generally. In order to understand the forces driving the transition of Chinese society, one must know what people think and feel about their society, and how their thoughts and feelings have evolved.⁵⁵ Second, legal culture analysis helps to illuminate the tensions between Western legal norms and deeply embedded local values,⁵⁶ and to understand the ongoing development of China's legal system.⁵⁷ The local values in China may include, and be influenced by, Confucianism, Taoism, Buddhism, and other local or imported

⁵³ National Bureau of Statistics of People's Republic of China, "Statistics Report on National Economic and Social Development of 2014 (2014 Nian Guomin Jingji he Shehui Fazhan Tongji Baogao)," accessed April 14, 2015, http://www.stats.gov.cn/tjsj/zxfb/201502/t20150226_685799.html.

⁵⁴ Pun and Lu, *supra* n. 49.

⁵⁵ Link, Madsen and Pickowicz, "Introduction," in *supra* n. 9.

⁵⁶ Potter, *China's Legal System*, *supra* n. 17; Potter, "Legal Reform in China: Institutions, Culture, and Selective Adaptation," *supra* n. 17.

⁵⁷ You and Ye, *supra* n. 7.

philosophies. Third, there has been increasingly closer and more frequent contact among nations and societies within the context of globalization, which underlines the need for cross-cultural analysis of legal performance in various regions.⁵⁸ Moreover, China's expanding trade and investment relations around the world underscores the importance of studying the legal culture in modern China.⁵⁹

We live in an age of convergence and resistance in legal cultures. Primarily, the journey of legal culture convergence moves in one direction: from the developed to the underdeveloped world, and among the developed countries themselves.⁶⁰ Potter highlights that this one-way distribution reflects imbalances in political and economic power.⁶¹ However, since their introduction in China, Western legal norms have confronted powerful resistance from Chinese local culture.⁶² The resiliency of local norms despite of new institutional arrangements is a significant element of the political and legal culture in China.⁶³ Potter uses the term, "dynamic selective adaptation," to describe the legal culture in modern China. According to Potter, selective adaptation describes a series of localized responses to imported legal standards, and suggests a

⁵⁸ Pitman B. Potter, "Selective Adaption, Institutional Capacity, and the Reception of International Law under Conditions of Globalization," in *Globalization and Local Adaptation in International Trade Law*, eds. Pitman B. Potter and Biukovic Liljana, (Vancouver: UBC Press, 2011), p. 10.

⁵⁹ *Ibid*; Potter, *China's Legal System*, *supra* n. 17; Potter, "Legal Reform in China: Institutions, Culture, and Selective Adaptation," *supra* n. 17.

⁶⁰ Friedman, *supra* n. 10.

⁶¹ Potter, *China's Legal System*, *supra* n. 17.

⁶² *Ibid*; Potter, "Legal Reform in China: Institutions, Culture, and Selective Adaptation," *supra* n. 17.

⁶³ M. McAuley, "Political Culture and Communist Politics: One Step Forward Two Steps Back," *Political Culture and Communist Studies* (1984).

spectrum of possibilities for application of external standards, based on variable degrees of conformity among local and non-local norms.⁶⁴ The reception of the imported legal norms depends on the extent to which these norms accommodate rather than replace the local values.⁶⁵ Bodde *et al.* also note that in China, ordinary people's awareness and acceptance of legal norms was shaped far more by the persistent impact of local custom and traditions than by any formally legal system.⁶⁶ Lubman argues that local values relate to social harmony, and conflicts among family, social structure, and political institutions, contribute to China's rich and disorderly "legal culture."⁶⁷ Head also makes the point that China does not aspire to an essential rule of law, such as domestic forms of government or liberal individual-centered conceptions of human rights, despite its legal development over past decades.⁶⁸ Moreover, neither the liberal models nor local values in China are absolute and unchanging. They are both constantly evolving, and there are variations within each of these, even when noting the differences.

Studying popular legal culture in China can also provide valuable insight into "local

⁶⁴ Pitman B. Potter, "Globalization and Economic Regulation in China: Selective Adaptation of Globalized Norms and Practices." *Washington University Global Studies Law Review* 2(2003): 119.

⁶⁵ Tunon, *supra* 42; Pitman B. Potter, "Selective Adaptation and Institutional Capacity: Perspectives on Human Rights in China," *International Journal* 61. 2 (2006): 389.

⁶⁶ Derk Bodde, Clarence Morris, and Ch'ing-ch'i Chu, *Law in Imperial China: exemplified by 190 Ch'ing Dynasty cases* (Cambridge: Harvard University Press, Mass, 1967), vol.1.

⁶⁷ Stanley B. Lubman, "Studying Contemporary Chinese Law: Limits, Possibilities and Strategy," *The American Journal of Comparative Law* 39.2 (1991): 293.

⁶⁸ John W. Head, *Great Legal Traditions: Civil Law, Common Law, and Chinese Law in Historical and Operational Perspective* (Carolina Academic Press, USA, 2011), 517- 525, 560-573.

knowledge.”⁶⁹ Su highlights that “rule of law” in China can only be achieved through local knowledge and resources, rather than simply by legal transplant from the West.⁷⁰ The market economy also needs a legal system that can reduce costs, promote exchanges, and optimize social wealth distribution to the most extent,⁷¹ and the top-down legal reforms, as well as transplanted rules, are not necessarily appropriate to an emerging market economy, and cannot replace the customs and traditions embedded in Chinese society.⁷² Liang also argues that China can only reach legal modernity by updating and reconstructing her traditions. Any imported culture can only survive by rooting itself into the traditional and local culture.⁷³ In fact, in the past decades, the most successful laws in China are largely initiated by ordinary Chinese people, especially peasants, such as legal reforms regarding rural land contract system and township enterprises. These successful legal reforms involved the recognitions of existing innovations of the Chinese people.⁷⁴

1.3.2 Minor Social Group & Increasing Labour Disputes

Migrant workers have contributed significantly to “China’s miracle” in the past decades.⁷⁵

⁶⁹ Geertz, *supra* n. 16.

⁷⁰ Su Li, *Rule of Law, and its Local Resources (Fazhi jiqi Bentu Ziyuan)* (Beijing: China University of Political Science and Law press, 2004).

⁷¹ Max Weber, *Max Weber on Law in Economy and Society*, (Harvard University Press, Cambridge, 1954).

⁷² Su, *supra* n. 70.

⁷³ Zhiping Liang, *Interpretation of Law, the Past, Current, and Future of Law in China (Fa Bian, Zhongguo Fa de Guoqu, Xianzai, he Weilai)* (Beijing: China University of Political Science and Law Press, 2004).

⁷⁴ Su, *supra* n. 70.

⁷⁵ Zhaozhou Han and Long Ge, “Statistical Analysis on the Contribution of Migrant Workers to China’s

The almost inexhaustible supply of cheap and compliant labour is one of the most attractive features to foreign invested enterprises. This group is also a major force in urban construction and infrastructure projects.⁷⁶ However, economic growth in China has been unevenly distributed; and the contradictions among labour, capital, and the state have deepened ever since the economic reform. The contribution rate of migrant workers to economic growth has increased steadily; however, their sharing rate has decreased.⁷⁷ Moreover, migrant workers suffer from discrimination and marginalization, and have been the main victims of the most serious labour-rights violations.⁷⁸ Due to the dual household registration system and the restrictive policies of local authorities, they are only “guests” of the cities selling their youth and labour.⁷⁹ Urban citizens and local authorities often treat migrant workers as second-class citizens; they and their families are often denied access to education, medical care and social welfare, to which only urban citizens are entitled.⁸⁰ Solinger notes that foreigners in Japan and Germany, which by no means welcome outsiders, receive much better treatment than migrant workers in China.⁸¹

Economic Growth and Achievement Sharing (Nongmingong dui Zhongguo Jingji Zengzhang Gongxian yu Chengguo Fenxiang de Tongji Fenxi),” *Statistics and decision making*, 4(2015):100; Zheng and Huang, *supra* n. 34.

⁷⁶ *Ibid.*

⁷⁷ Han and Ge, *supra* n. 76.

⁷⁸ Anita Chan. “Strikes in China’s Export Industries in Comparative Perspective.” *China Journal*, 65, (2011): 27; Shen, *supra* n. 31.

⁷⁹ Zheng and Huang, *supra* n. 34.

⁸⁰ United Nations, *The National Human Development Report for China*, (2005), accessed March 8 2015, <http://www.undp.org.cn/modules/php?op=modload&name=News&file=article&topic=40&sid=228>.

⁸¹ Dorothy J. Solinger, “Citizenship Issues in China’s Internal Migration: Comparisons with Germany and

In recent years, conflicts between the migrant workers and other social groups have become increasingly fierce and have had great impact on the Chinese society. Labour disputes and protests have increased dramatically,⁸² and have become noticeably more violent and massive, resulting in such incidents as the beating up of managers, mass protests or strikes, demonstrations, besieging headquarters of enterprises and local authorities, as well as blocking main roads or traffic.⁸³ Some workers have gone so far as to commit suicide in protest of the employers.⁸⁴ Besides aggressive labour protests, the new generation migrant workers also choose to “vote with their feet.” The Pearl River Delta region, where most of the labour-intensive manufacturing industries are located, started to experience migrant labour shortages starting in the early 2000s, and the problem has become increasingly serious. The labour shortage continued and spread to other areas, despite the fact that wages have risen constantly.⁸⁵ As one foreign observer states, “After years of being pushed to work 12-hour days, six days a week on

Japan,” *Politic Science Quarter* 114.3 (1999): 455.

⁸² C. J. J. Chen, “Growing Social Unrest and Emergent Protest Groups in China,” In *Rise of China: Beijing’s Strategies and Implications for the Asia-Pacific*, eds. H. H. M. Hsiao and C. Y. Lin (New York: Routledge, 2009), 87; Richard B. Freeman, and Xiaoying Li, “How Does China’s New Labour Contract Law Affect Floating Workers?” *National Bureau of Economic Research Working Paper Series* (19253) (2013).

⁸³ Lee, *supra* n. 45; Congressional Executive Commission on China, Report on Worker Actions in China, “Recent Worker Actions in China,” July 2, 2010, accessed March 28, 2015, <http://www.cecc.gov/pages/virtualAcad/index.phpd?showsingle=142008>.

⁸⁴ Freeman and Li, *supra* n. 82.

⁸⁵ Zhilong Chen, “To the Shortage of Labour Recruitment Difficult Symbol (Zhaogong Nan Xiangzheng Laodongli Zouxiang Duanque),” *Sina Finance*, February 20 2014, accessed May 23, 2016, <http://finance.sina.com.cn/zt/china/20140220/093318276916.shtml>.

monotonous low-wage assembly line tasks, China's workers are starting to push back."⁸⁶

The CCP considers this surge in labour unrest to be the "biggest threat to social stability."⁸⁷

Migrant workers' protests have driven important political and legal changes in China. In 2008, three important labour laws, namely Labour Contract Law, Labour Dispute Mediation and Arbitration Law, and Promoting Labour Employment Law, were enacted within one year. These laws clearly offer more protections for employees, and have been successful, at least in theory, in establishing a more convenient, efficient, effective, and low-cost mechanism to resolve labour disputes.⁸⁸ Another example is the "*Opinions on Further Promoting the Reform of the Household Registration System*" issued by State Council in 2014. This policy clearly states that China would gradually unify urban and rural household registration system. As a result, the dualistic household registration system which contributes to inequality between urban and rural dwellers in China would be abandoned gradually.⁸⁹ As Klare indicates, labour law is a legal discipline whose mainstream tradition is progressive.⁹⁰ Abrams also points out that labour laws are the

⁸⁶ Congressional Executive Commission on China, *supra* n. 85.

⁸⁷ Shen, *supra* n. 31.

⁸⁸ Yun Zhao, "China's New Labour Dispute Resolution Law: a Catalyst for the Establishment of Harmonious Labour Relationship?" *Comparative Labour Law and Policy Journal* 30.2 (Winter 2009): 409.

⁸⁹ Opinions on Further Promoting the Reform of the Household Registration System," accessed September 27, 2016, http://www.gov.cn/zhengce/content/2014-07/30/content_8944.htm.

⁹⁰ Karl Klare, "The Horizons of Transformative Labour and Employment Law," in *Labour Law in an Era of Globalization: Transformative Practices and Possibilities* eds. Joanne Conaghan, Richard Michael Fischl, and Karl Klare (Oxford: Oxford University Press, 2002).

outcome of complex, protracted, and sometimes bitterly contested struggles among different social groups;⁹¹ these have never been built from the top-down, but rather from the bottom-up.⁹² It is doubtless that these political and legal changes would not have happened if the Chinese migrant workers have not constantly fought back against perceived injustice.

This study focuses on a specific social group, 34 migrant construction workers who are all original residents from a typical undeveloped rural area in central part of China, and explores their legal culture. This group's legal culture, doubtlessly, can present the more than 400,000 migrant construction workers from their hometown, Xiaogan. Moreover, this sample can provide some valuable insight to the legal culture of more than 11 million migrant workers from Hubei Province.⁹³ It is also a typical example as the legal culture of more than 61 million migrant workers working in the construction industry, because of their share similar the same operation system and structure in this section. Last but not least, this study can shed some light on the legal culture of around 280 million migrant workers in China with Xiaogan construction workers as a case study. The participants' legal culture can present how the migrant workers make selective adaptations between the

⁹¹ Philip Abrams, *Historical Sociology* (Shepton Mallet: Open Books, 1982), 15.

⁹² Harry Arthurs, "Who's Afraid of Globalization? Reflections on the Future of Labour Law," in *Globalization and the Future of Labour Law*, eds. John D. R. Craig and S. Michael Lynk (Cambridge University Press, 2006).

⁹³ Statistics Bureau of Hubei Province. Analysis of Employment Characteristics and Transfer trend of Migrant Workers in Hubei, <http://www.stats-hb.gov.cn/tjbs/qstjbsyxx/114809.htm>. Accessed on June 13, 2017.

new legal institutions and the local values, and how they deal with the conflicts in their daily lives, in the context of urbanization and globalization.

1.4 Fieldwork and Methodology

1.4.1 Recruiting Criterion

This study selected two recruiting criterion: participants' hometown and industry of work. All participants are originally residents of Shuangfeng Town, Xiaochang County, Xiaogan City, Hubei Province, China. All participants' working experiences are predominantly in the construction industry. Thus far, few studies have focused on studying migrant workers from the same hometown. Meanwhile, compared to migrant workers in the factories of South China, migrant construction workers have attracted far less attention.⁹⁴

When I developed the research proposal in Vancouver, I designed only one recruiting criterion: the participants' hometown, and planned to do my fieldwork in Zuohe Village, Xinzhou Town, Wuhan City, Hubei Province, China. Since my father lived in that village from 1970 to 1971, as part of the *Campaign of Educated Youth Going to and Working in Countryside and Mountain Areas*,⁹⁵ he had a good relationship with his landlord, and

⁹⁴ Pun and Lu, *supra* n. 49.

⁹⁵ *The Campaign of Educated Youth Went to and Worked in Countryside and Mountain Areas* was a political campaign that started in 1969, and ended by 1978.

became good friends with the landlord's son, Lao Cao. They stayed in touch for many years, and Lao Cao warmly invited me to conduct my fieldwork in his village. He indicated that nearly all adults in his village migrated, saying, the village "is empty, only the aged and children left. They (the adults) only come back home in Spring Festival."⁹⁶

After informally interviewing 22 migrant workers in Zuohe Village in the Spring Festival of 2013, I found it was very difficult to generate meaningful comparisons with only one recruiting criterion. The migrant workers with whom I spoke in Zuohe Village were of different ages, different gender, and working in different industries and cities. As such, I decided to choose a second recruiting criterion, working industry, which has noticeable impacts on migrant workers' legal culture based on the information collected in the pre-fieldwork in Zuohe Village. However, it was difficult to find enough participants in Zuohe Village worked in same industry. Thus, starting in the spring of 2014, I settled in Wuhan, the capital city of Hubei Province, and took every chance I had to talk with migrant workers. Wuhan is a big city with a permanent population of 10.34 million by the end of 2014,⁹⁷ and with 2 million migrants.⁹⁸ As a less developed province in central China, Hubei is a major labour-exporting province.⁹⁹ Hence, I had good chances to

⁹⁶ Juan Li, (January 15, 2015), Personal Interview.

⁹⁷ Statistic Bureau of Wuhan, *Statistic Yearbook of Wuhan 2014*, accessed October 13, 2016, <http://www.whjt.gov.cn/Attachment/201604/201604201721390237.pdf>

⁹⁸ Wuhan Weekly, "There are 2 Million Migrant Workers in Wuhan," accessed October 13 2016, http://hb.sina.com.cn/news/n/2013-02-08/172452092_2.html.

⁹⁹ Huang Yan, "Hubei Exporting 11 million migrant workers in 2011, Making profits of 15.56 billion yuan," Xinhua Net, February 12, 2012, accessed October 13 2016,

access migrant workers from different areas of Hubei Province in Wuhan.

I approached possible interviewees undertaking intercept method. First, I attempted to chat with the migrant people with whom I became familiar with; for instance, the housekeepers who worked for my family, the cooks and waitress of the food courts I frequently went to, the technicians and workers who maintained my car, my beautician, my masseur, etc. When I had good communication with them, I asked them to introduce their colleagues and co-villagers to me. It was noticeable that the migrant workers I interviewed in Wuhan were not as relaxed as those I interviewed in Zuohe Village. Many of them were reluctant or unwilling to answer many questions.

Gradually, I narrowed down the choices for the second recruiting criterion to housekeepers and construction workers. It turned out that the snowballing method was not a good approach for recruiting housekeepers. Most of the housekeepers I accessed in Wuhan were women. They are guarded in responding to my questions, and did not have close relationships with other housekeepers, as they normally work by themselves. They had good relationships with their co-villagers; however, these people likely did not work as housekeepers. By the end of the fieldwork, I could not find enough housekeepers from the same hometown. This was a distinct weakness of the snowballing method.

On the other hand, snowballing worked well to recruit migrant construction workers. First, I approached Dayong who was contracted to complete small decoration project for my friend's apartment. Dayong was a nice and talkative person, and was glad to share with me his experiences in different cities. We had a very pleasant conversation. When he knew about my research plan, he invited me to visit his hometown, Shuangfeng Town, and told me that nearly all of the men and many women in his Town worked in the construction industry.

Together with Dayong, I went to Shuangfeng Town for the first time in November 2014, when migrants started to return home for the winter and spring festivals. Dayong referred three of his friends to me: Hongxing, Hongliang, and Xiaozhan. Each of them was free at that time, and was glad to chat with somebody who was interested in their experiences with respect. All of them subsequently referred their families and friends to me. I spent the entire winter in Shuangfeng Town, looking for potential participants. I walked around the villages, and spoke with every possible dweller. By the end, I had somehow become “famous” in that area, and was referred to as “that women who knows about Da Guansi¹⁰⁰ (lawsuit).” Some people even came to me asking for advice on their labour disputes, with some ultimately accepting my invitation to participate in the study. By March 2015, I had interviewed 34 migrant workers in total, all of whom were primarily working in the construction industry. I had to end up the fieldwork because all the migrant workers

¹⁰⁰ 打官司.

started to leave their hometown and to go to the host cities. It was a great experience. To clarify, all of the primary data in this study was collected from the fieldwork done in Shuangfeng Town. All collected data from interviews in Zuohe Village and Wuhan City has not been used in this study.

1.4.2 Hometown of Plasterers

Thanks to economic development over the past decades, China has become the largest construction site in the world.¹⁰¹ This booming industry provides sufficient job opportunities. Increasing Xiaogan farmers have become plasterers and tiling masters. They refer jobs and pass experiences to each other. The masters teach their sons and nephews. The local government of Xiaogan also strongly supports labour exporting in the construction industry. It established construction teams to contract projects all around China, and provided job opportunities for local residents. By 2016, the Xiaogan government signed the *Strategic Cooperation Agreements on Labour Exporting* with several leading national construction enterprises, including China Construction First Division, the Fourth Highway Engineering Bureau of China, and Beijing Construction Engineering Group. According to the *Agreements*, the Xiaogan government would export good construction teams and skillful labourers to these big companies.¹⁰² By May 2013,

¹⁰¹ Pun and Lu, *supra* n. 49.

¹⁰² Changjiang Times, “There are Xiaogan plasterers in Every Building in the Northeast (Dongbei Meidong Lou, Dou You Xiaogan Niwajiang),” May 2, 2013, accessed May 30 2016, <http://www.changjiangtimes.com/2013/05/441741.html>.

there had been more than 400,000 Xiaogan migrant workers working on construction sites throughout China. In 2012 alone, these Xiao construction workers earned over 10 billion yuan in total.¹⁰³

Gradually, migrant construction workers from Xiaogan, especially Xiaogan plasterers, have established a famous brand in this industry, because of their outstanding skills, good reputation, and efficiency.¹⁰⁴ Hence, Xiaogan is also known as the “hometown of plasterers.” Xiaogan plasterers are especially popular in the Northeast of China, where they have nearly monopolized the plastering market. For instance, in Hegang City alone, a small city of Heilongjiang Province, there are more than 2,000 Xiaogan plasterers.¹⁰⁵

According to the primary data, there are four reasons why local residents primarily choose to work in the construction industry. First, the booming construction industry in China provides sufficient job opportunities for rural labourers.¹⁰⁶ Nearly all of the interviewees confirmed that it was much easier to find jobs for plasterers in recent years. For instance, as Kai explained, “It is so easy to find a job nowadays! You just walk into a construction site casually, bang! You got a job! It’s different in the past. At that time, bosses chose workers, but now workers choose bosses, especially those masters with

¹⁰³ *Ibid.*

¹⁰⁴ *Ibid.*

¹⁰⁵ Zhimin Wang, “Xiaogan Plasterers Take 0.2 Billion Every Year,” *Hegagn Evening*, August 19, 2015, accessed April 26, 2015, <http://hegangnews.dbw.cn/system/2011/08/19/053348017.shtml>.

¹⁰⁶ Pun and Lu, *supra* n. 49.

good skills!”¹⁰⁷

Second, as many interviewees indicated, there is barely an entry threshold to become a construction worker. There is neither an education requirement nor starting fund. As long as you are strong, and can endure the hardship, you can be a construction worker in China. As Zhen said, “What else can I do? I only went to middle school, and cannot find a decent job. I have not enough starting fund to run my own business. But now the only thing I can do is construction work. At least, the payment is good.”¹⁰⁸

The third reason is the high income compared with other labour jobs. As Youyuan, born in 1994, told me, “I used to work in an electronic factory in Shenzhen. The work was easy, but the salary was only 2,000 yuan per month. It was too little! I barely can live on it, let alone supporting my family. I had to come back to construction site. This is the only way that I could earn more.” In recent years, construction workers’ income has increased steadily. In 2014, a skilled plasterer could earn 400-500 yuan per day, while an unskilled worker could make roughly 150-250 yuan per day. This payment is much better than for most labour jobs in China, and even better than many “white collar” jobs. For instance, in 2015, in Hubei Province, the minimum income was only 1,550 yuan per month.¹⁰⁹

¹⁰⁷ Juan Li, (January 18, 2015), Personal interview.

¹⁰⁸ Juan Li, (January 16, 2015), Personal interview.

¹⁰⁹ Huaxia Web, “The Minimum Income in Hubei Raised from September 1 (Jiu Yue 1 Ri Qi, Hubei

If the older generation of migrant workers chose to work in construction mainly because of high income, then the rural youth who now select this industry often do so because of the sense of freedom it affords. Xiong, born in 1990, explained, “We have more freedom when working in construction sites, because it is a day-to-day job. When to work and when to rest, I’m my own boss. There are many principles in factories. I get used to the freedom in construction sites, and cannot bear those disciplines in factories.”¹¹⁰ Wei also said, “Working on construction sites is like a drug. I am kind of addicted to it. It is too exhausting, but I really enjoy the freedom. Every two or three years, I need to take a ‘vacation’ and work in factories for a couple of months. But I return to construction site every time.”¹¹¹

1.4.3 Methodology – Oral History

As Paul Cohen explains, the point of this research is to “get inside China,” and to reconstruct Chinese history as far as possible as the Chinese people themselves experienced it, rather than in terms of what Western people think is important, natural, or normal.¹¹² As such, this study explores the real experiences, thoughts, and feelings of

Shangtiao Zuidi Gongzi Biaozhun),” August 10, 2015, accessed April 12, 2016, <http://www.huaxia.com/xgtb/xgla/2015/08/4513640.html>.

¹¹⁰ Juan Li, (December 25, 2014), Personal interview.

¹¹¹ Juan Li, (February 5, 2015), Personal interview.

¹¹² Cohen, *supra* n. 8.

ordinary Chinese people. The methodology combines qualitative and quantitative approaches, with the qualitative approach mainly being oral history. Oral history research is sometimes referred to as life history, personal narrative, self-report, memoir, testament or testimony research, and storytelling.¹¹³ As Currie explains, oral history is an approach found in the social sciences and anthropology, where a researcher reports on an individual's life, and how this life reflects broader cultural themes of a society and social histories.¹¹⁴ Maynes *et al.* believe that oral history is “a retrospective, first-person account of the evolution of an individual life over time and in social context.”¹¹⁵ Thompson and Park define oral history as the interviewing of eyewitness participants to events of the past, for the purposes of historical reconstruction. This allows for the construction of heroes not just from among leaders, but also from the unknown majority of the people. It helps the less privileged find dignity and self-confidence.¹¹⁶ Portelli highlights that oral sources are credible, but represent a different credibility than positivist historical research demands. He emphasizes that oral history is where personal “truth” coincides with shared “imagination.” The definition of an experience, and the meaning individuals ascribe to it, is in fact more valuable than chronological accuracy. Individual testimonials made from memory and imaginations are this methodology's

¹¹³ Valerie Raleigh Yow, *Recording Oral History: A Practical Guide for Social Scientists* (CA: Sage Publications, 1994).

¹¹⁴ Dawn Currie, *SOCI 503 Course Description* (Vancouver, UBC, 2011).

¹¹⁵ Mary Jo Maynes, Jennifer L. Pierce, and Barbara Lassett, *Telling Stories: The Use of Personal Narratives in the Social Sciences and History* (Ithaca and London, Cornell University Press, 2008).

¹¹⁶ Robert Perks and Alistair Thompson (eds.), *The Oral History Reader* (London: Routledge, 2006).

assets, not its faults.¹¹⁷ The most significant contribution of oral history's methodology is to include within historical record the practices and views of groups who might otherwise have been "hidden from history."¹¹⁸

In-depth interview is the key data collection method in oral history. Portelli emphasizes that the interviewer must be aware that he or she is in a learning situation, and try to remain open.¹¹⁹ Gelee reminds that we should see the interview as an exchange between two subjects, rather than between subject and object.¹²⁰ When I undertook the pre-fieldwork and fieldwork in China, I reminded myself of these tips all the time. I bought a second-hand bike, and rode around the villages. I learned to give cigarettes to the male residents with two hands when we met each other, which is a good way of showing respect in Xiaogan area. I learned to have meals with local residents on very short stools in their yards, without a table. In short, I fully respected the population and their customs, and proactively listened to their experiences with great interest.

1.4.4 Limitations

The first limitation of this study is the small example size. This only involved 34

¹¹⁷ Allesandro Portelli, *The Death of Luigi Trastulli and Other Stories* (New York: State University of New York Press, 1990).

¹¹⁸ Thompson, *supra* n. 11.

¹¹⁹ *Ibid.*

¹²⁰ Perks and Thompson, *supra* n. 130.

participants due to funding and capability restrictions. Hence, the conclusions of this study should be suggestive rather than definitive. For instance, the primary data indicates that host cities and educational background may have important impacts on migrant construction workers' legal culture; however, it is hard to make solid conclusion based on such a small example size. The second limitation is the approach of recruiting participants. The intercept method may lead to the following drawbacks, including self-selection, unweighted samples, and samples bias in friend-of-friend recruiting. All of these factors influence the validity of qualitative data collection.

Another limitation of this study is the lack of female participants. I expected to find some female migrant construction workers. In my fieldwork, I learned that females are playing increasingly important roles in the construction industry. In some families in Shuangfeng Town, couples work together on construction sites, sometimes with their young adult sons. Normally, women serve as their husbands and sons' assistants; women cook, mix cement, move materials, and take charge of money. There also have been an increasing number of skillful and strong Xiaogan female plasterers. For instance, in the first Plasterer Festival of Xiaogan in 2012, Nei Fengyun, a 42-years-old Xiaogan woman won the first prize in the Plasterer Competition, ahead of all male competitors.¹²¹ It was a pity that I could not get any female construction workers to participate in this study. Although

¹²¹ Yang Zhang and Wei Luo, "Xiaogan Plasterers, Earn 20 Billion Per Year," *Jingchu Net*, February 19, 2012, accessed May 4, 2015, <http://news.cnhubei.com/gdxw/201202/t1977853.shtml>.

the overall proportion of women in the construction industry is still not significant, whether female migrant construction workers' legal culture is different from males is worthy of further study.

Chapter 2 Literature Review

2.1 Introduction

Over the past four decades, two profound developments have reshaped the social landscape of Chinese society. The first is the dramatic development of a formal legal system; the second is the explosion in the number of migrant workers.¹ Although there has been an increasing amount of literature that explores the legal culture of China from various perspectives, and significant work on internal migration, there remains a gap in literature on the migrant workers' legal culture. This study aims to fill this research gap, and explore migrant workers' values, ideas, opinions, and attitudes with respect to the legal system and legal reform in China, within the context of market economic reform and globalization.

This chapter is comprised of three sections of background introduction and literature review. The first section discusses the theoretical aspects of this study. Theoretically, studies of legal culture overlap with social theories of law. Given that most of the legal system and regulations in contemporary China are transplanted from the West, and that notable tensions exist between imported legal norms and embedded local values, it is

¹ Aron Halegua, "Getting Paid: Processing the Labour Disputes of China's Migrant Workers," *Berkeley Journal of International Law* 26.1 (2008): 254; Yun Zhao, "China's New Labour Dispute Resolution Law: A Catalyst for the Establishment of Harmonious Labour Relationship?" *Comparative Labour Law and Policy Journal* 30.2 (2009): 409.

helpful to explore legal transplant theory, the social theories of law, and the debate between these two clusters of theories, starting in the 1980s. This section also explores the example of legal transplant in Japan in order to demonstrate that the transplanted legal system has not successfully been integrated into Japanese society, given that Japan is still dominated by traditional culture, oriented by Confucianism.² Drawing on the literature review on theory, this section explores how the evolution of the legal system and legal culture in Eastern societies, such as Japan and China, is more like a process of adaptation, rather than transplantation from the West.

The second section reviews the literature on the legal culture of China, including both English and Chinese sources. It mainly focuses on resistance from the local culture and political authorities to imported legal norms, such as the rule of law. It also elaborates the traditional legal culture in imperial China, as well as the significant differences in legal culture between China and the West from an historical perspective. Finally, the last section reviews literature on internal migration in contemporary China. This section explores contentious issues, both in English and Chinese literature, and argues that the legal culture of migrant workers, especially of migrant construction workers, has thus far lacked comprehensive examination.

² Takao Tanase, “The Empty Space of the Modern in Japanese Law Discourse,” in *Adapting Legal Cultures*, ed. David Nelken and Johannes Feest (Portland, OR: Hart, 2001).

2.2 Legal Transplant theory VS Social Theories of Law

2.2.1 Legal Transplant Theory

There are many metaphors to describe the process of China's legal development since 1840. One of the main tropes is "legal transplant," which means the moving of a rule or a system of law from one country to another, or from one people to another.³ According to Peerenboom, legal transplant suggests a teleological development toward a fixed termination whereby legal systems will grow into a liberal democratic rule of law. Some transplants may not survive, or fail to grow, depending on the different social and cultural conditions in a certain society.⁴ The legal transplant theory has been supported or challenged by many scholars, both in English and Chinese.⁵

Watson is the most important contributor to legal transplant theory. He believes that legal history provides a better comprehension of legal development; hence, any theory of the relationship between law and society must rest on the detailed history of certain legal systems.⁶ Based on voluminous and detailed studies of Roman law and the development of the civil law system, Watson argues that legal changes are primarily to be explained by

³ Alan Watson, *Legal Transplants: an Approach to Comparative Law* (Charlottesville: University Press of Virginia, 1974), 22.

⁴ Randall Peerenboom, *China Modernizes: Threat to the West or Model for the Rest?* (Oxford: OUP Oxford, 2007).

⁵ Li Su, *Rule of law, and its Local Resources (Fazhi jiqi Bentu Ziyuan)* (Beijing: China University of Political Science and Law Press, 2004); Zhiping Liang, *Interpretation of Law, the Past, Current, and Future of Law in China (Fa Bian, Zhongguo Fa de Guoqu, Xianzai, he Weilai)* (Beijing: China University of Political Science and Law Press, 2004); Randall Peerenboom, *supra* n. 4.

⁶ Alan Watson *supra* n. 3.

legal transplants, and legal transplants have been the most fruitful source of legal development in the Western world.⁷ Watson explains that this “transplant bias” of Western legal system is because of the nature of the legal profession; Watson argues that law is treated by the legal elite as existing in its own right; moreover, law has to be justified in its own terms: authority must be sought and found. These two features make law integrally conventional.⁸ Due to the same or similar legal education and professional knowledge, lawyers and lawmakers from different societies often share the same legal culture.⁹

2.2.2 Social Theories of Law

However, social theories of law provide different opinions on the recourse of law from the legal transplant theory. Based on the historical study of legal development in the US, Friedman claims that law is “not as a kingdom unto itself, not as a set of rules and concepts, not as the province of lawyers alone, but as a mirror of society.”¹⁰ As Friedman explains, the law “will follow every twist and turn of development. The law is a mirror held up against life.”¹¹ According to Friedman, “social theories of law,” which was called “mirror theories” by Watson, describes theories whose premises deny any notion of legal

⁷ Alan Watson, *The Evolution of Law* (Oxford: Basil Blackwell, 1985), 118-120; Alan Watson, *supra* n. 3.

⁸ *Ibid*

⁹ *Ibid*; also Watson, *supra* n. 3.

¹⁰ Lawrence M. Friedman, *A History of American Law* (New York: Simon and Schuster, 1973), 12.

¹¹ *Ibid*, 595.

“autonomy.” They treat law as a dependent variable, and believe that some “non-legal” forces, including economic, social, cultural or political forces, are shaping and reshaping legal institutions and legal systems.¹² Historically this class of theories appeared in the 18th century.¹³ For instance, Montesquieu declares, “The political and civil laws of each nation should be so closely tailored to the people for whom they are made, that it would be pure chance if the laws of one nation could meet the needs of another.”¹⁴ Montesquieu states that laws in a certain society should be related to the natural, cultural, and political conditions, and that these factors constitute the “spirit of laws.”¹⁵ Holmes states that the life of the law is not based on logic, but rather on experience. The law embodies the narrative of a nation’s development over centuries, and cannot be dealt with as a mathematics book, with corollaries and formulas.¹⁶ Chu highlights, as one type of social control, how law closely relates to customs and mores. It retains and affects existing values and institutions, and mirrors the social structure of a society.¹⁷ Savigny, Hegel, Marx, Jhering, Pound, and many other great thinkers have made similar statements.¹⁸

¹² Lawrence M. Friedman, “Law, Lawyers, and Popular Culture,” *The Yale Law Journal* 98 (1989): 1580.

¹³ William Ewald, “Comparative Jurisprudence (II): The Logic of Legal Transplant,” *The American Journal of Comparative Law* 43 (1985): 489.

¹⁴ Charles de Secondat baron de Montesquieu, *The Spirit of Laws*, translated from French of M. de Secondat, Baron de Montesquieu (London; Edinburgh: A. Donaldson, 1768), Book I, Ch. 3.

¹⁵ *Ibid.*

¹⁶ Oliver W. Holmes, *The Common Law* (Cambridge: The Belknap Press of Harvard University Press, 2009).

¹⁷ Tsu Tung Chu, *Law and Society in Traditional China* (Beijing: The Commercial Press, 2011).

¹⁸ Alan Watson, *Legal Transplants: An Approach to Comparative Law* (Charlottesville: University Press of Virginia, 1974): 22; Alan Watson, “Legal Change: Sources of Law and Legal Culture,” *University of Pennsylvania Law Review* 131 (1983), 1156-1157; David Nelken, “Towards a Sociology of Legal Adaptation,” in David Nelken and Johannes Feest, *supra n. 2*: 8.

2.2.3 Debate on Legal Transplant Theory

Not surprisingly, Watson's theory of legal transplant engendered attacks from different disciplines, including sociology of law, traditional comparative law, and legal history. For instance, Friedman claims that Watson's premises are unfounded. He highlights that legal systems change rapidly according to their environments, especially in modern times. The influence of society is overwhelming.¹⁹ Nelken also argues for legal changes in response to social developments, and that law is an instrument and consequence of group conflict. He argues that Watson's statement that law is the special province of lawyers, and does not serve normal citizens' interest, is faulty, especially in modern times.²⁰ Abel also challenges that Watson treats society "as an undifferentiated, personified whole," and ignores the differences between social groups and classes.²¹ Legrand argues that a rule is never totally self-explanatory, but rather is decided by context. Imported words are inevitably ascribed a different, local meaning; in turn, this produces a different rule. Therefore, according to Legrand, "legal transplant" does not actually happen.²²

In contrast to these critiques, Ewald believes that Watson's theory of legal transplant is of

¹⁹ Lawrence M. Friedman, "Some Comments on Cotterrell and legal transplants," In David Nelken and Johannes Feest (eds), *supra* n. 2.

²⁰ David Nelken, "Towards a Sociology of Legal Adaptation," in David Nelken and Johannes Feest, *supra* n. 2.

²¹ R. L. Abel, "Law as Lag: Inertia as a Social Theory of Law," *Michigan Law Review* 03 (1982).

²² Pierre Legrand "What "Legal Transplants"?" In David Nelken and Johannes Feest, *supra* n. 2.

great importance, for legal history, comparative law, and legal philosophy. Ewald explores that there are two versions of Watson's transplant theories: the weak version and strong version. Ewald claims that the "weak version" of Watson's theory is sufficient to scupper the traditional social theories of law. Because of the traditions of legal elite and "transplant bias" of Western legal systems, legal changes are not always in response to external factors; sometimes they respond to internal desires of the legal system itself. Hence, Ewald concludes that the notion that law reflects every need of a society is unreasonable. However, the strong version of Watson's argument, which means the legal development is only the outcome of purely legal history, can easily be challenged. Ewald also highlights that Watson's research focuses only on the private law in Western Europe, and he cannot draw conclusions about law in general.²³

The debate between social theories of law and the theory of legal transplant illustrates the complex, interactive, and multi-layered relationship between law and society.²⁴ Friedman and Abel both claim that Watson treats law as words on paper, not as a living process that involves the lived behavior of legal elites and ordinary citizens.²⁵ Watson admits that the subject of legal transplant is the "law in books." However, he believes that legal behavior is hemmed-in and restricted by rules of positive law.²⁶ From this perspective, the theory

²³ Ewald, *supra* n. 13.

²⁴ *Ibid.*

²⁵ Friedman, *supra* n. 19; Abel, *supra* n. 21.

²⁶ Watson, *supra* n. 18.

of legal transplant and social theories of law have different standards on the “success” of legal transplant. What is a successful legal transplant? According to Cotterrell, the transplantation of positive rules is unproblematic; but, if we treat law as a living process, legal transplant will not succeed unless the imported rules have considerable influence on relevant aspects of social life.²⁷ Obviously, scholars of social theories of law believe that the evolution process of the legal system in certain societies is one of adaptation rather than a simple process of transplantation from the West.

When exploring the theory and practice of legal transplanting, it is meaningful to explore the case of legal transplantation in Japan. Same as China, the society of Japan had been dominated by the traditional culture oriented by Confucianism for many years. While Japan decided to adopt economic, social, and legal reform during Meiji Period. Modern legal system and codes have been transplanted from the Western world ever since. Hence, Japan is often regarded as a successful example of legal transplant.²⁸ However, Tanase challenges that the transplanted legal system has not been successfully integrated into the Japanese society, given that it is still dominated by traditional culture oriented by Confucianism. The imported law has created a sense of inauthenticity. Although Japan is a highly industrialized society, Japanese people feel that the core of modern society is missing, and that Japan lacks the vital features of modern society. One of those missing

²⁷ Cotterrell, “Is There a Logic of Legal Transplants?” In Nelken and Feest, *supra* n. 2.

²⁸ Tanase, *supra* n. 2.

features is the value of rule of law.²⁹ This leads to a question: what if Japan did not decide to transplant a Western legal system during the Meiji period, what would the Japanese law be like today? Friedman predicts that it would not be essentially different. The law in Japan would not be stuck hopelessly in the past; on the contrary, it would have adapted itself to the industrial society anyway, promptly.³⁰ This study's findings support Friedman's statement, to some extent. Although the imported Western norms and values, including contract, litigation, trade union, rule of law, and rights, only have limited influence on migrant workers' legal culture, and on their behaviors, migrant construction workers still have growing power and confidence to protect their own interest because of economic and social changes to the Chinese society since the beginning of 2000s – a point that will be elaborated on in following chapters.

2.3 Legal Culture of China

2.3.1 Resistance to Rule of Law

There has been a growing body of literature on the legal culture of China, from different perspectives, in recent years. Much literature explores the resistance from the local culture and political authorities in China toward the imported legal norms of rule of law. For instance, Potter explores the notion of law as instrument and punishment in ancient

²⁹ *Ibid.*

³⁰ Friedman, *supra* n. 19.

China; he notes that law still serves as an instrument of rule for the CPC, and aims primarily to protect political organizations.³¹ McAuley highlights that the resiliency of local norms despite of new institutional arrangements is a significant element of the political and legal culture in China.³² Bodde *et al.* also note that in China, ordinary people's awareness and acceptance of legal norms was shaped far more by the persistent impact of local custom and traditions than by any formal legal system.³³ Head also makes the point that China does not aspire to an essential rule of law, such as domestic forms of government or liberal individual-centered conceptions of human rights, despite its legal development over past decades.³⁴ Minzner states that Chinese authorities have turned against law ever since 2000s, and rejected many legal reforms in the 1980s and 1990s. According to Minzner, the CPC has relied more on political levers to reshape the Chinese judiciary, and have nudged judges toward mediating, rather than adjudicating. These changes reflect that the CPC authorities are endorsing tighter control over the judiciary, and are attempting to reduce the influence of the rule of law in the society. Minzner argues that these changes may have severe long-term influences in undermining

³¹ Pitman B. Potter, *China's legal system*. (Malden; Cambridge, UK: Polity, 2013); also Pitman B. Potter, "Globalization and Economic Regulation in China: Selective Adaptation of Globalized Norms and Practices." *Washington University Global Studies Law Review* 2(2003): 119.

³² M. McAuley, "Political Culture and Communist Politics: One Step Forward Two Steps Back," *Political Culture and Communist Studies* (1984).

³³ Derk Bodde, Clarence Morris, and Ch'ing-ch'i Chu, *Law in Imperial China: exemplified by 190 Ch'ing Dynasty cases* (Cambridge, Harvard University Press, Mass, 1967), vol.1.

³⁴ John W. Head, *Great Legal Traditions: Civil Law, Common Law, and Chinese Law in Historical and Operational Perspective* (Durham: Carolina Academic Press, 2011): 560-573.

Chinese legal institutions.³⁵ Biddulph *et al.* argue that in China law is understood in the broad sense as including rules and regulations issued by actors other than legislative organs, including ministries, local governments, firms and unions, as well as procedures for implementation and dispute resolution. It is difficult to draw a sharp distinction between politics and law in the Chinese setting.³⁶

A great deal of literature explores the legal culture in China from comparative and historical perspectives, and illustrates the relationship between “traditional” and “modern” China. According to Gasster, modernization is an ongoing process of adjustment, moving toward modernity, but never actually reaching it.³⁷ Paul Cohen also challenges a theory that divides societies into “traditional” and “modern” phases of evolution. He highlights that most societies are mixtures of the modern and the traditional, not one or the other.³⁸ Paul Cohen also challenges the traditional “Western-impact-and-Chinese-response” approach in the West. He advocates a “China-centered” approach to understand the Chinese history in its own terms, by paying more attention to Chinese perceptions, rather than the perceptions and expectations

³⁵ Carl F. Minzner, “China’s Turn against Law,” *The American Journal of Comparative Law* 59.4 (2011): 935.

³⁶ Sarah Biddulph, Sean Cooney, and Ying Zhu. *Law and Fair Work in China*. London: Routledge, 2012.

³⁷ Michael Gasster, “Reform and Revolution in China’s Political Modernization,” in Mary C. Wright (ed.), *China in Revolution: The First Phase, 1900–1913* (New Haven: Yale University Press, 1968): 83.

³⁸ Paul. A. Cohen, *China Unbound, Evolving Perspectives on the Chinese Past*, (London: RoutledgeCurzon, 2004).

derived from Western history. He underscores that, “Perspective, indeed, is everything.”³⁹ Liang also emphasizes that there is no clear boundary between past, present and future, and tradition does not only exist in the past, but also exists in the present. He argues that although China’s entry into modern society was initiated by learning from the West, it can only reach modernity by updating and reconstructing traditions.⁴⁰

2.3.2 Traditional Legal Culture of China

Chinese legal development is sharply different from the Western civilizations in many ways because of different narratives and histories.⁴¹ In previous centuries, China was a highly centralized state. The premature and delicate political system was established in 221 B.C.⁴² Huang investigates the unification of Chinese agricultural civilization, arguing that a centralized political system was determined by natural conditions, including the cultivable loess, frequent natural disasters, and constant invasion from the nomad nations, among other factors.⁴³ Hou elaborates that the Western civilization was developed from “family” to “private,” and then to “state.” The Romans separated “state” from “family” from the beginning of Western civilization. While, in China, and in most Eastern societies, the civilization evolved from “family” directly to “state.” There was

³⁹ *Ibid.*

⁴⁰ Liang, *supra* n. 5.

⁴¹ Derk Bodde, Clarence Morris, and Ch'ing-ch'i Chu, *supra* n. 33; Wailu Hou, *History of Chinese Ancient Society*, (Beijing, Shenghuo-Dushu-Xinzhi Joint Publishing Company, 2012). The first edition of this book was published in 1949.

⁴² Hou *ibid*; Ray Huang, *China: A Micro-History*. (Beijing: Shang Wu Press, 1997).

⁴³ Huang, *ibid*

never a process of completed separation of “family” and “state” in Chinese history. The “family” and “state” are always integrated.⁴⁴ In fact, the Chinese term of “state” (Guojia) includes two words: Guo (state) and Jia (family), which indicates that the boundary between “state” and “family” in ancient China was never clear. “The emperor of a state” (Jun) and “the father of a family” (Fu) were considered similar, and “state” was an extension of “family.”⁴⁵ Moreover, different from the religious-grounded civilization process in the West, the process in China was towards a totally secular civilization. In China, there has never been a religion like Christianity, and there has never been opposition between spiritual and secular worlds. The “religion” in ancient China was the highly moralistic Confucianism, which is a system of ethics that is restricted to humans. The dominance of Confucianism in China made for a much greater role for moralism in both governance and law.⁴⁶

In imperial China, law is only considered an instrument to punish serious immoral behaviors.⁴⁷ Some studies explore the penal emphasis of the law in imperial China. They find that the civil nature of law was mostly ignored, or was given only limited attention within its penal format.⁴⁸ For instance, Bodde *et al.* demonstrate that a major

⁴⁴ Hou, *supra* n. 41.

⁴⁵ Liang, *supra* n. 5.

⁴⁶ Philip C. C. Huang “Morality and Law in China, Past and present,” *Modern China* 41.3 (2015); Bodde, Morris, and Chu, *supra* n. 33.

⁴⁷ Potter, *supra* n. 31.

⁴⁸ Bodde, Morris, and Chu, *ibid*; Liang, *supra* n. 5.

concern of the law in ancient China was moral or ritual impropriety, or violence of the total social order and harmony. Hence, the law in ancient China always worked in a vertical direction, from the state down to the individual, rather than horizontal mechanics between two entities. Rights were not the interest of the law in imperial China.⁴⁹ Liang argues that the legal system in ancient China was a kind of moralized law, or legalized morality, called “Li Fa system” (courtesy system with penalty). The penalty of the “Li Fa system” was not only punishment from authorities, but also a symbol of shame, because only immoral behaviors would be punished. Such a legal system is devoid of the religious basis found in Western law.⁵⁰ As Confucius exclaimed, “If governing a society by politics and penalty, people do not want to be punished, but they do not feel shame; if governing a society by morality and courtesy, people feel shame and behave appropriately.”⁵¹ Therefore, what can arouse people’s respect and belief in traditional China was morality and courtesy, rather than law or penalty.⁵²

The most important word in the Chinese legal vocabulary is *Fa*, which is the generic term for positive law as an abstraction, and can also mean separate “laws.”⁵³ In the ancient Chinese book, *Explanations of language and words* (Shuo Wen Jie Zi), *Fa* means “as flat

⁴⁹ *ibid.*

⁵⁰ Zhiping Liang, “Death and Rebirth,” in Zhiping Liang, *supra* n. 5; Xiuaao Tao, *Confucian philosophy and Western philosophy. Their history mission in the modern era. (Rujia Zhexue He Xifang Zhexue Tamen De Lishi Shiming He Dangdai Xianghui)* (Beijing: Chinese Social Publication, 2009).

⁵¹ Weizheng, in Lun Yu, in Bojun Yang (eds.), *Notes on Lun Yu*, (Beijing, China Publishing, 2006). The original sentence is: “道之以政，齐之以刑，民免而无耻；道之以德，齐之以礼，有耻且格。”

⁵² Liang, *supra* n. 50; Tao, *supra* n. 50.

⁵³ Bodde, Morris, and Chu, *supra* n. 33.

as water, and as straight as ruler.” The symbols of water and ruler represent justice and equality.⁵⁴ In imperial China, *Fa* was a model or standard imposed by authorities to which the people must conform.⁵⁵ The word *Fa* is derived from Fa doctrine, which appeared in the Chunqiu Period (770 B.C. – 476 B.C.). The Fa doctrine posits that the authority must rely on harsh rules and cruel punishment to govern a society. Qin Shi Huang, the first emperor of China, who unified China in 221 B.C., adopted the theory of Fa doctrine, and meted out harsh penalties to govern society.⁵⁶ The Qin Dynasty was the only one to adopt Fa doctrine in China’s history, and also boasted the shortest duration, lasting only fourteen years.⁵⁷ The Fa doctrine had never played as a dominant social norm in China ever since the fall of the Qin Dynasty.⁵⁸ The word “*Fa*” is derived from, and influenced by, Fa doctrine. Hence, the law in imperial China emphasized the penal aspect of law. Fa doctrine had its time of prominence in Chinese history, but was overtaken by Confucianism from the Han Dynasty. The highly centralized political system built in China thousands of years ago required implicit morality and a strict family ethic as the basis of the social order, rather than explicit rules and regulations.⁵⁹

Among nearly one hundred doctrines emerged during the Chunqiu and Zhanguo periods

⁵⁴ The original book was published in Han Dynasty, around 100 A.D. – 121 A.D. See Xu Shen, *Explanations of language and words (Shuo Wen Jie Zi)* (Beijing, Zhonghua Publishing, 2013) 58.

⁵⁵ Bodde, Morris, and Chu, *supra* n. 33.

⁵⁶ Qian Sima (145 B.C. - Unknown) *Records of History (Shi Ji). Volume 6, Qin Shi Huang Records (Qin Shi Huang Benji)* (Beijing: Huaqiao Publishing of China, 2013).

⁵⁷ Wenxian Zhang, *Jurisprudence (Fa Li Xue)*, (Beijing: Beijing Law Publication, 2006), 28-31.

⁵⁸ Kaiyuan Li, *Collapse of Qin Empire (Qin Diguo De Beng Kui)*, (Beijing: Zhonghua Publication, 2007).

⁵⁹ Huang, *supra* n. 42.

(B.C.475 – B.C.220); three of them were most famous, namely Fa, Mo, and Ru (Confucianism). One can describe the Fa doctrine as based in realism, the Mo doctrine as idealism, and Confucianism as “Ideal Realism” or “Realistic Idealism.”⁶⁰ Confucianism is the only doctrine that continues to thrive, and established the general social norms and social order in China. Toynbee highlights that Confucianism is a completely rational political and life philosophy.⁶¹ According to Liang Qichao, the core ideas of Confucian philosophy are Xiu Ji An Ren, which means that gentleman should cultivate himself first, thereby bringing peace and security to the people; and Nei Sheng Wai Wang, which means possessing a moral inside, while a strong outside.⁶² According to Confucianism, people should first focus on their inward worlds, fostering good morals and virtues, acquiring knowledge, and making themselves “gentlemen” (Jun Zi); then, they should try to support the authority to make the world better. No matter whether they are given opportunities by the authorities, gentlemen should never stop fostering their inward morality and virtues.⁶³

Confucianism believes that the best way to govern a society is to educate and cultivate people through good morality, and rely on *Li* (Courtesy system), which covers the entire range of ritual or polite behavior, secular as well as religious. This covers all institutions

⁶⁰ Tao, *supra* n.

⁶¹ Arnold Toynbee, Ikeda Daisaku, and Richard L. Gage (eds.), *Choose life: A Dialogue*. (London: Oxford University Press, 1976).

⁶² Qichao Liang, *Confucian Philosophy (Ru Jia Zhexue)* (Beijing: China Book Company, 2015).

⁶³ *Ibid*; Tao, *supra* n. 50.

and relationships, both political and social, and makes for harmonious living in a Confucian society.⁶⁴ In general, the main rules of *Li* can be categorized as “Sangang Wuchang,” the three cardinal guides and the five constant virtues. The three cardinal guides are as the followings: ruler guides subject, father guides son and husband guides wife. The five constant virtues include Ren (kindness and generous), Yi (upright and selfless), Li (courtesy and rites), Zhi (wisdom and knowledge), and Xin (mutual trust and honest).⁶⁵ The emergence of “Sangang Wuchang” marks the beginning of the institutional Confucianism from the Han Dynasty. After generations of reinforcement, these Confucian norms and values are considered as the nature of human beings, and are deeply embedded into Chinese society.⁶⁶

China’s traditional legal culture was “majority by morality, secondary by law as penalty” (De Zhu Xing Fu). Confucius claimed that one of his political dreams was to have “no lawsuits” (Wu Song).⁶⁷ As Bodde *et al.* explain, Confucians’ attitude toward law was bitterly hostile, especially in its early stages. Later, they softened their attitude and accepted law begrudgingly as a necessary evil.⁶⁸ Liang highlights that there was no clear

⁶⁴ Bodde, Morris, and Chu, *supra* n. 33.

⁶⁵ Guangdong Xu, *The Establishing of San Gang Wu Chang, from Dong Zhongshu dao White Tiger Collections (San Gang Wu Chang de queli he xingcheng, cong Dong Zhongshu Dao Baihuji* (Beijing: China Book Company, 2014).

⁶⁶ Tao, *supra* n. 50.

⁶⁷ Qiang Ren, *Knowledge, belief, and surpassing, interpretation of Li Fa System of Confucianism (Zhishi, xinyang, yu chaoyue, rujia lifa sixiang jiedu)* (Beijing: Beijing University Press, 2009): 200-204; Tao *supra* n. 50; Bodde, Morris, and Chu, *supra* n. 33.

⁶⁸ Bodde, Morris, and Chu, *supra* n. 33.

boundary between law and morality in ancient China. He underscores the idea that as a daily ethic, Confucianism had more fundamental and thorough influence on China's society than Christianity had in the Western world. It is even harder to remove such influences.⁶⁹ Huang highlights this notion, arguing that the joining together of law and morality is the essential feature of traditional legal culture in China, and will remain a major characteristic of Chinese law in the future. Due to the influence of this traditional legal culture, the legal system in China also presents a preference for mediation over adjudication. The purpose of informal mediation is to achieve "harmony."⁷⁰ Of course, the traditional local values in China are also influenced by Legalism, Taoism, Buddhism, and some other philosophies, even some of these values are not of Chinese "origin." They are embedded into the Chinese society to some extent during hundreds of years of selective adaption.

Conservative literature has held that imperial China's judicial system was highly draconian and only a means for a powerful state to oppress and control society. However, recent scholarship on legal history in China has essentially challenged this view.⁷¹ For instance, Macauley demonstrates that the judicial system in imperial China was not merely a repressive social mechanism. Agents at all levels of society operated, negotiated,

⁶⁹ Liang, *supra* n. 5.

⁷⁰ 己所不欲勿施于人.

⁷¹ Lean, Eugenia. Melissa Macauley, Social Power and Legal Culture: Litigation Masters in Late Imperial China, Stanford: Stanford University Press, *Law and History Review* 22 (3) 2004: 650.

and appropriated different aspects of the legal arena to their own advantage. Macauley explores that despite the official condemnation, litigation masters and their practices were an integral part of the systemic order of formal dispute resolution in the late imperial period in China. ⁷² Zelin *et al.* also challenge the conservative view that there was not a viable civil law that protected people and their property, they examine the important role that contracts and other written documents have played in everyday relationships and transactions in China. According to Zelin *et al.*, contracts have not only been useful since ancient times for negotiating daily life, but they also were helpful for spreading the process of “commodification” throughout Chinese society in the early modern era. ⁷³

2.3.3 Ambivalent Attitude of the Regime

Due to different history and narrative, the imported value of “rule of law” seems not being supported from either traditional Chinese culture or the Party regime. It took long time to integrate the “rule of law” in China. At the establishment of the PRC, the Chinese legal system was transferred from a patchwork Civil Law system to a Socialist legal system copied from the Soviet Union. According to classic Marxism, law is an instrument of class struggle, “a tool that the dominant group uses to govern the ruled classes.”⁷⁴

⁷² Melissa Ann Macauley, *Social Power and Legal Culture: Litigation Masters in Late Imperial China*. Stanford, Calif: Stanford University Press, 1998.

⁷³ Zelin, Madeleine, Jonathan K. Ocko, and Robert Gardella. *Contract and Property in Early Modern China*. Stanford, Calif: Stanford University Press, 2004.

⁷⁴ Karl Marx, *On Capital II* (Beijing: People Press, 2004), 267.

Therefore, the legal system was still dominated by the CPC, and was far from independent. As Peng Zhen, former president of the National People's Congress in the early 1950s said, the “CPC leads us to make a law, and also leads us to enforce the law.”⁷⁵ Unfortunately, the primary leader of the CPC, Mao Zedong, did not hold a respectful attitude towards law. He once said, “We need the law, but we cannot be ruled by the law.”⁷⁶ In 1958, Mao reiterated this point, stating, “Many new things have an illegal start.”⁷⁷ Because of this attitude from the top leader, the Socialist legal system was not paid much attention in society, as a whole. Soon, contempt became obliteration. In 1966, the Cultural Revolution was initiated in order to enhance control over the proletariat.⁷⁸ In the process, political institutions such as the legal system were totally destroyed. The economy collapsed, and society devolved into chaos.

The Party leadership recognized the importance of law because of the painful lessons learned from Cultural Revolution. Deng Xiaoping once stated, “Ruling the country by man, even a man as great as Chairman Mao, is not stable. Man makes mistakes. ‘Rule of law’ is more stable.”⁷⁹ The Third Plenary Session of the 11th Central Committee of CPC was the formal start of market economy reform. Its Public Report announces, “In order to

⁷⁵ Lisan Jiang, *Legal Modernization in China (Zhong Guo Fa Zhi Xian Dai Hua Zhi Lu)* (Beijing: China Legal Publishing House, 2006), 165

⁷⁶ Rui Li, *Later Years of Mao Zedong (Wan Nian De Mao Ze Dong)* (Chun Qiu Publishing, 1999): 13.

⁷⁷ *Ibid*: 18.

⁷⁸ Xuan Xi and Chunming Jin, *Brief History of Cultural Revolution (Wen Hua Da Ge Ming Jian Shi)* (Beijing: CPC History Publishing, 2006). 3.

⁷⁹ Deng Xiaoping, *Selected Works of Deng Xiaoping (Deng Xiao Ping Wen Xuan)* (Beijing, People Press, 1993), 212.

protect the People's Democratic Dictatorship, Socialist 'rule of law' must be enhanced. The legal system must be stable, coherent, and authoritative. There must be laws to go by, the laws must be strictly enforced, and law-breakers must be punished."⁸⁰ This is also considered the formal start of Chinese legal reform. Law is still regarded as an instrument; however, it is an instrument for securing economic growth, rather than class struggle. The 9th National People's Congress amended the Constitution of the People's Republic of China in 1999, and added the 5th Article: "People's Republic of China implements the rule of law, and builds a socialist country under the rule of law."⁸¹ This is a cornerstone of the legal reform in China, and "rule of law" finally became legitimate.

However, the Party leadership maintains an ambivalent attitude towards legal reform and "rule of law." On one hand, it realizes the significance of a "rule of law" in market economic reform; on the other hand, it feels threatened that the "rule of law" may have negative influences on its dictatorship. Right after amending the Constitution, Jiang Zemin, the former president of the PRC, declared in 2000, "We should pay equal attention to 'rule of law' and 'rule of morality'."⁸² In 2004, in the 16th Central Committee of the PRC, President Hu Jintao, proposed that China would establish a 'Harmonious Society'. The official explanation for a "Harmonious Society" is one where every

⁸⁰ *Ibid*, p. 205.

⁸¹ Constitution Law of the PRC. 1999. Art 5.

⁸² News of the Communist Party of China, "Central ideological and political work conference (Zhongyang sixiang zhengzhi gongzuo huiyi)," accessed December 5th, 2016, <http://dangshi.people.com.cn/GB/151935/176588/176597/10556650.html>.

individual has a high level of morality, and diverse classes and groups coexist and cooperate harmoniously.⁸³ This obviously is a variant of “rule of morality.”

2.3.4 Three Theoretical Models of Legal Evolution in China

There has been a greater body of literature that focuses on legal culture and legal evolution in China in recent years. According to Jiang, there have been three theoretical models of legal evolution in China: the legal-modernity model, the civil-society-and-state model, and the local-resource-and-rule-of-law model.⁸⁴ Many scholars have made contributions to the legal-modernity-model, which originated in the 1990s. For instance, the work of Gong Pixiang, Xie Hui, Yao Jianzong, and Jiang Lishan focused primarily on legal modernity, the format, entity and motivations of rule of law, as well as standards and directions of legal modernity.⁸⁵ Deng Zhenglai is an important representative of the

⁸³ Xinhua Net, Bulletin of the Sixth Plenary Session of the Sixteenth Central Committee of the Communist Party of China, (Zhongguo Gongchandang dishiliu jie Zhongyang Weiyuanhui diliu ci quanti huiyi gongbao), accessed December 5, 2016,

http://news.xinhuanet.com/politics/2006-10/11/content_5190605.htm.

⁸⁴ Lishan Jiang, *Legal Modernity, Research on Rule of Law in China (Falv xiandaihua, Zhongguo fazhi daolu wenti yanjiu)* (Beijing: China Legal Publishing House, 2006): 4-12.

⁸⁵ Pixiang Gong, *Evolution of Legal Modernity in China (Zhongguo fazhi xiandaihua de jincheng)* (Beijing: People's Public Security University Press, 1991); Pixiang Gong (ed), *Revolution of Law in Modern China (Dangdai Zhongguo falv geming)* (Beijing: Law Press, 1999); Pixiang Gong, *Philosophy of Law and Legal Modernity (Fa zhexue yu fazhi xiandaihua)* (Nanjing: Nanjing Normal University Press, 1998); Lishan Jiang, “Analysis of the Characteristics of Legal Modernization in China (Zhongguo fazhi xiandaihua jianshe tezheng fenxi),” *Chinese and Foreign Jurisprudence* 4 (1995); Lishan Jiang, “Basic Framework and Implementation Steps of Legal Reform in China (Zhongguo fazhi gaige wenti jiben kuangjia he shishi buzhou),” *Chinese and Foreign Jurisprudence* 6(1996); Lishan Jiang, “Research on Legal Reform and Process of Rule of Law in China (Zhongguo fazhi gaige he fazhigua guocheng yanjiu),” *Chinese and Foreign Jurisprudence* 3(1998).

civil-society-and-state-model, which explores the current situation of civil society in China, and predicts its future development.⁸⁶ Su highlights the importance of learning and making good use of “local resources” in order to achieve legal modernity in China. He believes that China will establish a Chinese-style “rule of law” in the future, adapting to the emerging market economy. This, he argues, can only be achieved with local resources, which include historical traditions, but also legal practices of the people in modern China, as well as formal and informal orders and norms. The transplanted rules are always different from Chinese people’s customs and habits, and are hard to accept, at least at first; therefore, people often choose to avoid formal laws, instead turning to traditions and customs. This contributes to the ineffectiveness of the formal legal system in China.⁸⁷

Liang Zhiping is often considered the pioneer of legal culture studies in China.⁸⁸ Liang dedicates to interpreting the law by culture, and interpreting culture by the law. As he

⁸⁶ Zhenglai Deng, *State and Society, Research on Civil Society in China (Guojia yu Shehui, Zhongguo Shimin Shehui Yanjiu)* (Chengdu: Sichuan People’s Press, 1997); Zhenglai Deng (ed.), *State and Civil Society, Research Path in Sociology Study (Guojia yu shimin shehui, yizhong shehui lilun de yanjiu lujing)* (Chengdu: Sichuan People’s Press, 1999).

⁸⁷ Li Su, *supra* n. 5; Duanhong Chen, “Confrontation, from Administrative Litigation to See the Way out of China’s Constitutional Government (Duizhi, cong xingzheng susong kan Zhongguo xianzheng chulu),” *Jurisprudence in China and Foreign Countries (Zhongwai Faxue)* 4 (1995): 6.

⁸⁸ Qinhua He, Weifang He, and Tao Tian (eds.), *Legal Culture, Talks by three Scholars (Falv Wenhua San Ren Tan)*. Beijing: Peking University Press, 2010, 11. Liang published a series of articles regarding legal culture in China in the 1980s. these articles are collected in Liang’s two books, *Seeking Harmony in Natural Order, Research on Chinese Traditional Legal Culture (Xunqiu Ziran Zhixu zhong de Hexie: Zhongguo Chuantong Falv Wenhua Yanjiu)*, and *Interpretation of law, past, present, and future of law in China (Fa Bian, Zhongguo Fa de Guoqu, Xianzai, he Weilai)*.

explains, “Law reveals the life style of a certain group of people at specific time, but also the belief system of this social group.”⁸⁹ Liang emphasizes “interpreting” and “differentiating” the culture symbols, based on social and economic situations of a certain society. According to Liang, since the 19th century, all reforms, revolutions and cultural debates can all be considered part of an unprecedented cultural crisis, and persistent efforts of Chinese people to overcome these crises.⁹⁰

Increasing literature explores legal reform in China from a cultural perspective. For instance, Xing explores how recent changes in China’s legal culture are being influenced by the two philosophies of good governance, currently emphasized by the country’s leadership: the rule of law and social harmony. Focusing specifically on criminal procedure, Xing investigates the core of China’s current legal culture – the combination of the rule of law and social harmony, and analogizes it with the mixture of Confucianism and legalism in imperial China.⁹¹ There is also a great deal of literature that investigates legal transplant in China. For instance, Zhang demonstrates the three obstacles of applying legal transplant in modern China; namely, the contradiction between the motivation and result of legal transplantation, the distance between legal text and practice, and the distance between the ideal of legal elites and less-developed society. Zhang also

⁸⁹ Liang, *supra* n. 5.

⁹⁰ *ibid.*

⁹¹ Lijuan Xing, “The Rhyme of History: a Transition of Legal Culture in China Crowned by the Criminal Procedure Law 2012,” *Asia Pacific Law Review* 23.1 (2015): 31.

emphasizes that the foundation of laws is the history and local culture, without which legal transplant is difficult to accomplish.⁹² King explores that as a latecomer, China's modernization needed more than transplanting Western ideals, such as science and democracy, justice, liberty, and rule of law. It was also critical for China to decide what kind of modernization it wanted. King claims that during the century-long process of modernization, we saw little cool-headed, self-reflective thinking in this regard.⁹³

2.4 Internal Migration in China

Many studies have examined internal migration in China.⁹⁴ Most literature in this area focusing on the political and legal changes, the rights violations, labour protests, migration experiences, labour mobility, physical and psychological health, and related family issues.

2.4.1 Political and Legal Changes

Since 1949, policies and regulations regarding rural-to-urban migration have changed

⁹² Renshan Zhang, *Sovereignty, Rights, and Society of Modern China (Jindai Zhongguo de zhuquan, faquan, he shehui)* (Beijing: Law Publication, 2014).

⁹³ Yeo-Chi King, "Construction of China's Modern Civilization, on China's Modernization and Modernity," in *Economic Democracy and Economic Liberty*, ed. Junning Liu (Shanghai Sanlian Bookstore Press, 1998), 42.

⁹⁴ Liren Shen, *Chinese Migrant Workers (Zhongguo Nongmingong)* (Beijing: China Democracy and Construction Press, 2005); Arianne M. Gaetano and Tamara Jacka (eds.), *On the Move: Women and Rural-to-Urban Migration in Contemporary China* (New York: Columbia University Press, 2004); Anita Chan, *China's Workers under Assault: the Exploitation of Labour in a Globalizing Economy* (Armonk, N.Y.: M.E. Sharpe, 2001).

significantly, adapting to the social and economic transitions in Chinese society. Generally, it evolved from “restriction,” to “control and administer,” and then to “facilitate and service.”⁹⁵ From 1958 to the late-1970s, the household registration system effectively chained Chinese farmers to the land.⁹⁶ The adoption of the household contract responsibility system since 1978 has freed tens of millions of farmers from their land. Increasingly, peasants have travelled to urban areas looking for extra income, despite restrictions of the household registration system.⁹⁷ Since the 1980s, the central government has undertaken a series of reforms to the household registration system, making it easier for the migrants to reside in urban areas, and more effective to track and govern this population.⁹⁸ In 1983, peasants were allowed to work in urban areas while retaining their rural household registration.⁹⁹ In 1985, migrant workers were able to register for temporary residence permits in most cities.¹⁰⁰ In the past decade, some local authorities have also undertaken reforms of the household registration system. For instance, Chongqing City launched a large-scale household registration reform in October 2010, and planned to shift 10 million migrant workers’ household registration from the

⁹⁵ Max Tunon, “Internal Migration in China: Features and Responses,” *ILO Asia and the Pacific* 8 (2006), accessed October 10 2016,

www.ilo.org/public/english/region/asro/beijing/download/training/lab_migra.pdf.

⁹⁶ Cindy C. Fan, “Migration, Household Registration, and the City,” In *China Urbanizes: Consequences, Strategies, and Policies*, ed. Shahid Yusuf and Tony Saich (Washington DC, The World Bank, 2008), 76.

⁹⁷ Jie Shen, *Labour Disputes and Their Resolution in China* (Oxford: Chandos, 2007); Liren Shen, *supra* n. 94.

⁹⁸ Gaetano and Jacka, *supra* n. 94.

⁹⁹ Ling Li, “Towards a More Civil Society: Mingong and Expanding Social Space in Reform-era China,” *Columbia Human Rights Law Review* 149.156 (2001).

¹⁰⁰ Fan, *supra* n. 96.

rural to urban category within 10 years. By July 30, 2011, roughly 2.2 million migrants have attained their non-agriculture household registration.¹⁰¹

By and large, the attitude of host governments toward migrant workers has been negative, or even hostile; home governments' attitude is encouraging, while the central government has remained ambivalent. Home governments consider internal migration as an effective way to move extra rural labourers into non-agricultural sectors, relieving surplus labourers and reducing unemployment. The central government's ambivalence is largely based on the conflict between the increasing need for labourers in urban areas and the limited facilities in big cities.¹⁰² Prior to 2003, host governments' attitude toward migrant workers tended to be: "can't live without migrant workers, but don't want to live with them."¹⁰³ The growing urban economy requires migrant workers to perform low-end, heavy-labour, and dangerous jobs, and to develop service sectors.¹⁰⁴ Migrant workers are generally treated as second-class citizens by urban citizens and local authorities.¹⁰⁵ Zhang and Luo propose that the household registration system contributes to inequality in

¹⁰¹ China News, "2.2 Million Migrants Got Urban Household Registration in the First Year of Rural-urban Household Registration Integration Reform in Chongqing," July 30th, 2011. Accessed August 10, 2016, <http://news.sina.com.cn/c/2011-07-30/212422906093.shtml>.

¹⁰² Xin Frank He, "Regulating Rural-urban Migrants in Beijing: Institutional Conflict and Ineffective Campaigns," *Stanford Journal International Law* 39.2 (2003): 177.

¹⁰³ Gary Silverman, "Vital and Vulnerable," *Far Eastern Economic Review* 23 (1996): 60.

¹⁰⁴ He, *supra* n. 102.

¹⁰⁵ United Nations, "The National Human Development Report for China," (2005), accessed September 15 2016, <http://www.undp.org.cn/modules/php?op=modload&name=News&file=article&topic=40&sid=228>.

social status, and links the household registration with different rights and interests.¹⁰⁶

In recent years, there has been increasing political and legal changes to restore migrant workers' rights. In 2007, for instance, the government introduced three important labour laws: the Labour Contract Law, the Labour Dispute Mediation and Arbitration Law, as well as the Promoting Labour Employment Law. On July 24 2014, the State Council issued the "Opinions on further promoting the reform of the household registration system."¹⁰⁷ The *Opinions* state that China is going to formally unify the urban and rural household registration systems. The goal of reform, by 2020, is to have roughly 100 million agricultural residents settle down in towns and cities, and to establish effective systems of social administration and public services.¹⁰⁸

2.4.2 Watershed

The surge rural-to-urban migration in China has attracted a great deal of attention from Western and Chinese scholars. During the 1990s and early- 2000s, a great deal of Chinese literature focused on the demographic features of the internal migration, the economic and political influences, and the administration of migrants in cities.¹⁰⁹ For instance, Li *et*

¹⁰⁶ Shuya Zhang and Guoliang Luo, "China's Migrant Workers: How Far from Being Citizens?" *Asian Social Science* 9.1 (2013).

¹⁰⁷ State Council, "Opinions on Further Promoting the Reform of the Household Registration System," accessed September 27, 2016, http://www.gov.cn/zhengce/content/2014-07/30/content_8944.htm.

¹⁰⁸ *Ibid.*

¹⁰⁹ Mengbai Li and Xin Hu, *Influence of Floating Population on Urban Development and Some*

al. compare the “floating populations” in Beijing and Shanghai, with that in Guangzhou, arguing that the population in Guangzhou increases faster, the average stay period in Guangzhou is shorter, and the proportion of females is higher. The authors argue that administration on the floating population in Guangzhou should be more stringent than in other big cities. They believe that the Guangzhou government should upgrade the industrial structure in order to reduce the amount of migrants with “low quality” (di suzhi). They also advocate for the position that local government needs to improve administration on leasing houses and temporary living permit system.¹¹⁰ Some literature attempts to investigate the relationship between migrants and urban crime, and blames migrants as main causes of the increasing crime rates in cities.¹¹¹

In many ways, 2003 was a watershed year for Chinese rural-to-urban migration studies. Major Chinese scholars and the media changed their attitude regarding migrant workers. Li suggests that Sun Zhigang affair¹¹² was a main source,¹¹³ while many believe that the

Countermeasures (Liudong renkou dui dachengshi fazhan de yingxiang ji duice) (Beijing: Jingji Daily Publisher, 1991).

¹¹⁰ Ling Li, Ouyang Hui, Yaosen Chen, and Wensheng Lin, “Administration on Floating Population in Big Cities, Case Study in Guangzhou Comparing with Beijing and Shanghai (Dachengshi liudong renkou tedian ji guanli, yi guangzhou weili jianyu Beijing Shanghai de bijiao),” *Population Studies* 2.46 (2001).

¹¹¹ Guoan Ma, *Floating Population and Crime in China (Zhongguo de liudong renkou yu fazhui)*. Beijing: China Legal Publishing, 2001.

¹¹² On March 20th, 2003, 27-year-old man, Sun Zhigang, died in a detention center in Guangzhou. Sun left his hometown, Huanggang City, Hubei Province, and went to work in Guangzhou as a designer from February 2003. On March 17th 2002, he was stopped by a policeman in the street, and was asked to show his Temporary Living Permit, and ID card. Sun had not applied for the permit, and did not have an ID card with him at that time. He was sent to a detention center by the police, and died there three days later because of savage beating.

Sun’ death aroused significant attention from the public and mass media in China. Two groups of

Event of Sun Zhigang was only a catalyst. In 2001, the central government launched the Rural Tax Free Reform, which increased peasants' income. As a result, the Pearl River Delta region started to experience noticeable labour shortage, which continued, and spread to other areas.

All these social and economic changes in China from the beginning of 2000s, including the national labour shortage, increasingly fierce labour protests, higher income in rural areas, different international competing strategies of the state, etc., all together made the regime to update the related policies and regulations. Policies gradually shifted from “controlling and administration” to “facilitating.”¹¹⁴ For instance, in October 2003, Chinese Premier Wen Jiabao helped a construction migrant worker from Chongqing to recover his defaulted wages of 2,240 yuan.¹¹⁵ This event sent a clear sign to authorities at all levels to pay more attention to resolve labour disputes of migrant workers.¹¹⁶ From 2003, local governments launched a “chasing after wage-arrears campaigns” by the end

senior legal scholars appealed to the National People's Congress, questioning the legitimacy of the Custody and Repatriation (C&R) Regulation. They argued that the C&R Regulation was unconstitutional. On June 20 2003, Premier Wen Jiabao announced that C&R regulations were abolished. On this, see: Fang Kecheng, “Sun Zhigang, Abolish One Regulation because of One Man,” *South Weekend*, December 31st, 2010, accessed November 12, 2016, <http://www.infzm.com/content/54102>.

¹¹³ Guozhen Li, “Summary on Migrant Workers Research in the Past Decades, Case Study of 491 Articles (Jishinianlai nongmingong wenti yanjiu zongshu, yi zhongguo quanwen qikan wang shang 491 pian wenzhang weili,” *Social Science Forum* 80 (2008): 68.

¹¹⁴ Tunon, *supra* n. 95.

¹¹⁵ Verna Yu, “Pay Day at Last after Premier Aids a Peasant; Wen Jiabao is quick to end impoverished worker's plight,” *South China Morning Post*, October 29 2003, 6.

¹¹⁶ Some Opinions on Solving Problems of Migrant Workers, http://www.gov.cn/jrzg/2006-03/27/content_237644.htm.

of every lunar year.¹¹⁷ Around the same time, the mass media also changed its attitude towards migrants. For example, on February 8th 2005, Xinhua Daily used the term “Kegong (guest workers)” instead of “Nongmin Gong (migrant workers)”; on March 16th 2005, Urban Express (Dushi Kuaibao) advocated to replace the term “Nongmin Gong (migrant workers)” by “Xin Rongren (new workers).”¹¹⁸ In April 2012, the Human Resources and Social Security Department of Guangdong Provincial first brought the title “personnel working in different regions,”¹¹⁹ replacing the old title of “migrant workers.” Xinhua Net highlights that this change in titles reflect local governments’ new respect for migrant workers.¹²⁰ At the same time, Chinese literature has increasingly explored issues of migrants’ social security, child education, rights protection, and industrial injury insurance, among other topics.¹²¹

2.4.3 Rights Violations and Discriminations

A dramatic development of labour law in China has been witnessed over the past two decades. The framework of individual employment protection rights established mainly

¹¹⁷ Anita Chan. “A ‘Race to the Bottom’: Globalization and China’s Labour Standards.” *China Perspectives* 52(2003): 2.

¹¹⁸ Shen, *supra* n. 94.

¹¹⁹ 异地务工人员.

¹²⁰ Huajiang Du, “Changing the Title of Migrant Workers is a Progress (Gaibian Nongmingong Chengwei Yeshe Yizhong Jinbu),” accessed July 24, 2016, http://news.xinhuanet.com/comments/2012-04/15/c_111780798.htm.

¹²¹ Zhen Li (ed.), *Victims at Work: Selected Works on Occupational Safety and Health Right of Migrant Workers (Gongshangzhe: nongmingong zhiye anquan yu jiankang quanyi lunji)*, (Beijing: Social Science Publisher, 2005).

by the Labour Law of 1994, the Labour Contract Law of 2007, the the Labour Dispute Mediation and Arbitration Law, and the Promoting Labour Employment Law. These regulations have provided a basic “floor of rights” for Chinese workers.¹²² However, much literature argues that the Chinese workers’ labour rights have not been well protected, especially before the new labour regulations’ enforcement, and especially those migrant workers. For instance, Shen highlights that migrant workers are particularly vulnerable to abuse,¹²³ and are the main victims of serious labour-rights violations.¹²⁴ In fact, most literature in this field focuses on rights violations and discrimination, including underpayment and wage default, forced labour, long working hours, punishment and physical assaults from the management, violations on industrial security and health.¹²⁵ For instance, as Chan points out, the minimum wage standard in China is so low that it is competitive with Vietnam and Cambodia, though the cost of living is much lower in those countries. What is worse, the minimum wage has simply become the maximum amount that employers are willing to pay workers in the labour-intensive industries.¹²⁶ Even so, wage defaults are still common, especially in 1990s and early of 2000s. According to a survey undertaken by ACFTU, by November 2004, the wage default of migrant workers

¹²² Alan C. Neal. “Implementing ILO Fundamental Labour Rights in China: A Sensitive Meeting of Form and Substance?” in Ulla, Liukkunen, and Chen, Yifeng. *Fundamental Labour Rights in China - Legal Implementation and Cultural Logic*. Volume 49, New York: Springer, 2016.

¹²³ *Ibid*; Jie Shen, *supra n.* 97: 25.

¹²⁴ Anita Chan, “Strikes in China’s Export Industries in Comparative Perspective.” *China Journal*, 65, (2011): 27; Anita Chan, *China’s Workers under Assault: the Exploitation of Labour in a Globalizing Economy* (Armonk, N.Y.: M.E. Sharpe, 2001), 7.

¹²⁵ *Ibid*.

¹²⁶ Chan, *supra n.* 124

reached 100 billion yuan, and payment delay time ranged from one month to eight years.¹²⁷ A newspaper article describes the wage default as a “custom” in Guangdong,¹²⁸ while another describes it as an “incurable disease.”¹²⁹

Ever since the beginning of 2000s, especially after 2008 when the three major labour regulations were enforced, the central and local governments in China have undertaken many efforts to ensure the workers’ rights, and the migrant workers have been better protected gradually. However, long working hours, wage arrears, and lack social insurances are still quite common among migrant workers in China. For instance, in 2013, the government estimated that only 28.5% of 166 million rural migrant workers were covered by work-injury insurance, 17.6% by medical insurance, 15.7% by old age pensions, 9.1% by unemployment benefits, and 6.6% by maternity insurance.¹³⁰ According to the National Statistics, the proportion of wage default among migrant workers was 1%, and the proportion in the construction industry was 2%, higher than that of other migrant workers. The average wages arrear was 9788 yuan per person.¹³¹

Much English literature regarding internal migrant workers in China explores the discrimination, inequality, and rights violations that migrants have suffered in urban areas,

¹²⁷ China Labour Bulletin, *China’s Catch 22: When It Costs More to Claim Wage Arrears than the Wage Arrears Are Worth*, October 5, 2005, <http://www.clb.org.hk/en/node/17585>. Accessed May 18, 2015.

¹²⁸ Workers Daily, May 9th, 2001

¹²⁹ China Labour Security Paper, February 19th, 2002.

¹³⁰ National Bureau of Statistics. *Investigative Report on the Monitoring of Chinese Migrant Workers in 2013*. http://www.stats.gov.cn/tjsj/zxfb/201405/t20140512_551585.html. Accessed on June 9, 2017.

¹³¹ National Bureau of Statistics, *Investigative Report on the Monitoring of Chinese Migrant Workers in 2015*, http://www.stats.gov.cn/tjsj/zxfb/201604/t20160428_1349713.html. Accessed on June 9, 2017.

in the context of globalization and market economic reform. For instance, Chan investigates the main forms of violations and assaults that Chinese migrant workers have suffered at the hands of foreign invested, or joint-venture companies in South China.¹³² Chan and Wang demonstrate the different behaviors of Taiwanese managers in the footwear industry in China and Vietnam, and assert that the labour rights and standards in China are much worse than those in Vietnam. They believe that the different attitude of local governments is the main reason for this difference, and that the governments' different attitudes also result in trades unions having different capabilities in these two countries.¹³³ Zhang and Luo contend that migrant workers cannot enjoy corresponding benefits as citizens, such as employment, housing, pension, medical treatment and education. They note that there is still a long journey to go to turn from "migrant workers" to real "workers," and gradually unify the identification of migrant workers and urban residents, and enable internal migrants to have equal rights with urban citizens.¹³⁴ Lin explores migrant workers' endangered pension entitlement in China, and argues that the decentralized pension structure in China has restricted the movability of the urban pension program. The interests of host cities have become a major difficulty to reforms that pursued to resolve the pension portability issue, which has led to welfare inequality

¹³² Anita Chan, *supra n.* 124.

¹³³ *Ibid*; Anita Chan and Hongzen Wang, "The Impact of the State on Workers' Conditions: Comparing Taiwanese Factories in China and Vietnam." *Pacific Affairs*, 77 (4) 2004: 629-46

¹³⁴ Shuya Zhang and Guoliang Luo, "China's Migrant Workers: How Far from Being Citizens?" *Asian Social Science* 9.1 (2013).

in different areas in China.¹³⁵

2.4.4 Migration Experiences

There is a growing body of literature that pays attention to the migration experiences of individual migrant workers, especially female migrant workers. These studies attempt to explore the impacts of migration on individual's identities, values, opinions, and attitudes, as well as their social relations, especially gender relations, and the discourse that inform them.¹³⁶ For example, Ngai explains that the lives of Chinese dagongmei (young female migrant workers) have to be understood in the context of rapid changes in China over the past decades. She argues that the hybrid marriage of state power and global capital has created new forms of control on both social and individual level. She argues that young migrant workers, especially migrant women, are subsumed by the expropriation of global capitalism and the state socialist system, which is always in favor of urban and industrial development.¹³⁷ Gaetano demonstrates the agencies, experiences, and subjectivities of young rural women working in domestic service in Beijing. She argues that these women's motivations and expectations for migration must be understood in the context of

¹³⁵ Jing Lin, "Labour Mobility without Pension Portability: Migrant Workers' Endangered Pension Entitlement in China," *Asian Social Work and Policy Review* 9 (Richmond: Wiley Subscription Services, Inc., 2015).

¹³⁶ Gaetano and Jacka, *supra* n.94; Tamara Jacka, *Rural Women in Urban China Gender, Migration, and Social Change* (Armonk, N.Y.: M.E. Sharpe, Inc., c2005); Leslie T. Chang, *Factory Girls: from Village to City in a Changing China* (New York: Spiegel and Grau, 2009); Yan Hairong, *New Masters, New Servants Migration, Development, and Women Workers in China* (Durham : Duke University Press, 2008).

¹³⁷ Pun Ngai, *Made in China: Women Factory Workers in a Global Workplace* (Durham: Duke University Press, 2005).

complex discourses relating to the identity and role of the “modern urban women” and “filial rural daughter,” simultaneously. Migrant women’s agency lies in their ability to balance the contradictions between these discourses.¹³⁸ Lin and Short explore migrant women’s aspirations for the future, based on a survey conducted in Zhangjiagang City. They argue that migrant women marry differently both from rural women who have never migrated, as well as urban women. Moreover, once married, migrant women’s experiences are different from local women, as they are outsiders in the community.¹³⁹ Bai and Song explore the main reasons that migrants decide to *huiliu* (return to hometown), and their experiences after *huiliu*. They argue that, despite many successful cases reported by the mass media, returned migrants tend to run their own business successfully in their hometowns; that said, most return migrants have lower income and less job opportunities than in cities. It is not easy to start their own business, because of the economic and policy limitations in the less developed regions, as well as the migrants’ own capabilities.¹⁴⁰

2.4.5 Labour Mobility and Spatial Mobility

Much literature pays attention to labour mobility in China. Many studies explore the

¹³⁸ Arianne M. Gaetano, “Filial Daughters, Modern Women: Migrant Domestic Workers in the Post-Mao Beijing,” in Arianne M. Gaetano and Tamara Jacka, *supra* n.98.

¹³⁹ Lin Tan and Susan Short, “Living as Double Outsiders: Migrant Women’s Experiences of Marriage in a Country-level City,” in Arianne M. Gaetano and Tamara Jacka, *supra* n.95.

¹⁴⁰ Nansheng Bai and Hongyuan Song, *Return, or Stay in City? Research on Chinese Migrant Workers’ Returning to rural areas (Huixiang, haishi jin Cheng? Zhongguo nongcun waichu laodongli huiliu yanjiu)* (Beijing: China Finance Economic Press, 2002).

composition and demographic features of migrant workers, the main push and pull factors that impact their migration decisions, how the social network works in the migration process, as well as causes for returning to rural areas.¹⁴¹ For instance, Rozelle *et al.* investigate the income level of those who decide to migrate. They indicate that the typical migrant is young, poor, has little land, and from an inland province; however, the poorest rural residents in the most remote areas are unable to migrate, as it requires access to information, transportation, and communication, which is less available in the poorest areas.¹⁴² Tian and Xu explore the job mobility of migrant workers based on a survey of migrant workers in six cities in eastern China. They demonstrate a high degree of job mobility among migrant workers who use a “trial and error” method to search for better jobs. They underscore that the job mobility of migrant workers reflects these people’s aspirations to find better incomes and working conditions.¹⁴³ Huang explores the impact of inner-industrial job mobility on income increase of migrant workers. She illustrates that low human capital, low employment grades and low income are the most important reasons for migrant workers to change jobs. Young and single migrant workers with lower educational attainment tend to switch jobs within the industry; while, those who

¹⁴¹ Michael C. Seeborg, Zhenhu Jin, and Yiping Zhu, “The New Rural-urban Labour Mobility in China: Causes and Implications,” *Journal of Socio-Economics* 29.1 (2000): 39; Yaohui Zhao, “Leaving the Countryside: Rural-to-urban Migration Decisions in China,” *The American Economic Review* 89.2 (1999): 281.

¹⁴² Scott Rozelle, Li Guo, Minggao Shen, Amelia Hughart and John Giles, “Leaving China’s Farms: Survey Results of New Paths and Remaining Hurdles to Rural Migration,” *The China Quarterly* 158 (1999): 367.

¹⁴³ Ming Tian and Lei Xu, “Investigating the Job Mobility of Migrant Workers in China,” *Asian and Pacific Migration Journal* 7 (2015).

have high income and better educational attainment tend to change jobs among different industries. Huang concludes that inner-industrial job switches have an important optimistic influence on income growth of low-income migrant workers, and an important negative influence on high-income migrant workers.¹⁴⁴

Liu examines the “urban villages” in Beijing based on primary data collected from surveys. “Urban village” is a special phenomenon of contemporary China’s process of urbanization, where local rural peasants built an “informal” habitat and mainly rent to migrant workers. Destroying or conserving such habitats has become an issue of good or bad governance related to migrants’ rights and social justice. Liu highlights the point that the existence of an “urban village” presents an “urbanization of injustice,” and shows the “growth coalition” between the State, property investors, and local committee.¹⁴⁵

2.4.6 Physical and Physiological Health

Physical and physiological health of migrants is another contested issue in both the English and Chinese literature. For instance, some studies explore the HIV/AIDS infection among migrant workers in China.¹⁴⁶ Some researchers investigate mental health

¹⁴⁴ Qian Huang, “The Impact of Job Mobility on Earnings Growth of Migrant Workers in Urban China,” *Frontiers of Economics in China* 6 (Brill, Netherlands, 2011).

¹⁴⁵ Ran Liu, *Spatial Mobility of Migrant Workers in Beijing, China* (DE: Springer International Publishing, 2015).

¹⁴⁶ Tingzhong Yang, Wei Wang, Abu Saleh Abdullah, Jennifer Beard, Chengjian Cao and Mowei Shen, “HIV/AIDS-related Sexual Risk Behaviors in Male Rural-to-urban Migrants in China,” *Social Behavior*

of migrant workers, and the impacts of migration on mental health.¹⁴⁷ Female migrant workers' reproductive health also has attracted much attention.¹⁴⁸ Other scholars have explored occupation injuries suffered by migrant workers, including occupational injury insurance and compensation.¹⁴⁹ For instance, Fitzgerald *et al.* discuss the literature related to the occupational injury surveillance and prevention among migrant workers in China. They note that there is little systematic surveillance of occupational injury, and few evaluated interventions, despite the fact that migrant workers account for a significant proportion of occupational injury morbidity and mortality in China. Fitzgerald *et al.* advocate for surveillance and interventions in high-risk occupations, such as construction, manufacturing, and small mining operations; more occupational safety

and Personality: An International Journal 37.3 (April, 2009): 419; T. Hesketh, L Li, X Ye, H Wang, M Jiang, and A Tomkins, "HIV and Syphilis in Migrant Workers in Eastern China," *Sexually Transmitted Infections* 82 (2006):11.

¹⁴⁷ Jiang Shan, Zhang Lu, and Weihong Wang, "The Mental Health of Migrant Workers in Chongqing City," *Psychological Science* (2007), 1; Lu Li, Hongmei Wang, Xuejun Ye, Minmin Jiang, Qinyuan Lou, and Therese Hesketh, "The Mental Health Status of Chinese Rural-urban Migrant Workers, Comparison with Permanent Urban and Rural Dwellers," *Social Psychiatry and Psychiatric Epidemiology* 42(2007): 9.

¹⁴⁸ Wang Feng, Ping Ren, Zhan Shaokang, and Shen Anan, "Reproductive Health Status, Knowledge, and Access to Health Care Among Female Migrant in Shanghai, China," *Journal of Biosocial Science* 37 (2005), 603; Zhenzhen Zheng, Yun Zhou, Lixin Zheng, Yuan Yang, Dongxia Zhao, Chaohua Lou and Shuangling Zhao, "Sexual Behavior and Contraceptive use among Unmarried, Young Women Migrant Workers in Five Cities in China," *Reproductive Health Matters* 9.17 (2001): 118.

¹⁴⁹ Tak-sun Ignatius Yu, Yi Min Liu, Jiongliang Zhou, and Tze-wai Wong, "Occupational Injuries in Shunde City – a County Undergoing Rapid Economic Change in Southern China," *Accident Analysis and Prevention* 31.4 (1999): 313; Ingrid Nielsen, Chris Nyland, Russell Smyth, Mingqiong Zhang, and Cherrie Jihua Zhu, "Which Rural Migrants Receive Social Insurance in Chinese Cities? Evidence from Jiangsu Survey Data," *Global Social Policy* 5.3 (2005): 353; Jinliang Zhu, Zhaolin Xia, David C. Christiani, Gary S. Sorock, Tingting Ye, Theodore K. Courtney, Taokou Zhu, Qingmin Wu, and Hua Fu, "Fatal Occupational Events in a Development Area in East China: 1991 to 1997," *Occupational Health/Safety in the World* 42.5 (2000): 267.

training should also be provided.¹⁵⁰

2.4.7 Labour Disputes and Protests

Much literature investigates labour disputes and labour protests of migrant workers, and argues that the formal legal system has not provided effective protections for migrant workers, especially before 2008. Shen explores that Chinese workers have become more vulnerable and marginalized since the economic reform. There has been a sharp increase in labour disputes in China over the past decades, while workers lack independent power to protect their own rights, because of the incapability of the Chinese trade unions and the “window dressing” collective contract system.¹⁵¹ Halegua investigates the “subclass” of migrant workers, who lack education, money, and knowledge of the law, are “easy to exploit,” and are often denied basic rights. In sum, scholars largely agree that China’s legal system has failed migrant workers. The formal legal process of labour disputes remains inefficient and ineffective for migrant workers, while informal mediation is far more accessible, efficient, and practical.¹⁵² Some literature explores that there have been marked increase in labour disputes and protests in China in recent years, and the increase coincides with the end of the era of surplus labour. Some literature highlights that that

¹⁵⁰ Simon Fitzgerald, Xin Chen and Hui Qu, “Occupational Injury among Migrant Workers in China: A Systematic Review,” *Injury Prevention: Journal of the International Society for Child and Adolescent Injury Prevention* 19(5) (2013), 348.

¹⁵¹ Shen, *supra* n. 97.

¹⁵² Halegua, *supra* n. 1; Yun Zhao, *supra* n. 1.

disputes result from a better rights awareness of the workers.¹⁵³

Lee makes a valuable comparison between labour protests of the state-owned enterprises (SOEs) laid-off workers in North China and labour protests of migrant workers in South China. Lee describes the former as a protest of desperation, and the latter as a protest of discrimination. Both protests share some similar features, including targeting local officials, cellular activism, fragmentation of interests, and legalistic rhetoric.¹⁵⁴ Leung and Pun explore labour protests and resistance based on a case study in the gemstone industry in Huizhou. They reveal that these protests are undergoing a process of “radicalization,” whereby migrant workers frequently take collective and progressive actions, including factory-level and industrial level strikes, work stoppages, collective bargaining, joint complaints and appeals, and resorting to media exposure. Leung and Pun contend that the migrant workers in factories are not as helpless, docile, atomized victims as they are often described; on the contrary, they never stop struggling.¹⁵⁵

Some literature explores the impact of China’s Labour Contract Law on labour disputes. For instance, Lee and Zhang highlight that an important purpose of the Labour Contract Law is to resolve labour protest on an individual basis, before they transform into

¹⁵³ OECD Library. *Labour Market Changes, Labour Disputes and Social Cohesion in China*. 2012.

¹⁵⁴ Ching Kwan Lee, *Against the Law: Labour Protests in China’s Rustbelt and Sunbelt* (University of California Press, 2007).

¹⁵⁵ Leung Pak Nang and Pun Ngai, “The Radicalization of the New Chinese Working Class: a Case Study of Collective Action in the Gemstone Industry,” *Third World Quarterly* 30.3 (2009): 551.

collective and confrontational forms,¹⁵⁶ because the CPC is strongly opposed to collective actions.¹⁵⁷ Remington and Cui also explain that the Labour Contract Law and the Labour Dispute Mediation and Arbitration Law aim to improve employment conditions by enforcing the legal rights of individual workers, vis-a-vis employers. However, the Party authorities did not grant political autonomy to the collective instruments for workers, such as trade unions.¹⁵⁸ Brown raises the objection that there is a lack of direction given to mediation committees at grass-root levels, and there also exists a lack of legal awareness among workers. He advocates that further education and training is necessary both for mediators and workers.¹⁵⁹

Chan explores migrant workers' means of resolving labour disputes. She portrays how workers usually try to reason with managers first; when stone-walled, they send representatives to local government authorities to seek help. Only when they are still ignored do they take to the streets, blocking highways, forcing the authorities to pay attention. Chan contends that compared to workers in other Asian countries, such as Indonesia, Cambodia and Bangladesh, Chinese workers have been relatively compliant.

They have not demanded many basic legal rights for themselves, but rather only

¹⁵⁶ Ching Kwan Lee and Yonghong Zhang, "The Power of Instability: The Microfoundations of Bargained Authoritarianism in China," *American Journal of Sociology* 118.6 (2013): 1475.

¹⁵⁷ Gary King, Jennifer Pan and Margaret E. Roberts, "How Censorship in China Allows Government Criticism but Silences Collective Expression," *American Political Science Review* 107(2) (2013), 326.

¹⁵⁸ Thomas F. Remington and Xiaowen Cui, "The Impact of the 2008 Labour Contract Law on Labour Disputes in China," *Journal of East Asian Studies* 15 (2015).

¹⁵⁹ Ronald C. Brown, "Defusion of Labour Disputes in China: Collective Negotiations, Mediation, Arbitration, and the Courts," *China-EU Law Journal* 3 (2014).

demanding defaulted wages.¹⁶⁰ Chan demonstrates a new type of demand – protests over unpaid or underpaid social insurance, and housing fund contributions by employers. She describes how more than 40,000 workers went on strike at a large shoe factory in Guangdong Province, because workers discovered that the company had not been contributing enough toward their retirement. A year later, 5,000 workers at another shoe factory went on strike, demanding a housing fund mandated by law. Chan explores that workers had not paid much attention to these two funds for many years; however, as they aged, they became increasingly concerned with being short-changed.¹⁶¹

Some literature explores the formal legal system of labour disputes resolution in China. For instance, Hwang challenges that the formal legal system has not provided effective protections on labour rights, from the perspective of arbitrators in China. He explores that the current legal system endeavors to promote the regime's capacity to rule over labour relations, rather than establish an impartial platform. The recent reform excluded arbitral independence, and the arbitrators have to put the political and economic interests over safeguarding labour rights.¹⁶² Some study explores that the “mediation” component in the labour dispute resolution system, and examines that mediation is designed to operate at the enterprise level, and aims to prevent disputes taking on an

¹⁶⁰ Anita Chan, “China’s Migrant Workers’ Legal Rights Awareness on the Rise,” *International Centre for Trade Union Rights* 22 (2015).

¹⁶¹ *Ibid.*

¹⁶² Hwang, Kyung-Jin, and Kan Wang. Labour Dispute Arbitration in China: Perspectives of the Arbitrators. *Employee Relations* 37 (5): 2015: 582.

increasingly rigid formalistic character, eventually becoming subject to intervention outside the enterprise.¹⁶³

2.4.8 Left-behind Children and Aging Migrants

Some literature explores the situation of migrant workers' children who are left behind in rural hometowns. For instance, Yuan and Wang explore that there are roughly 61 million children left behind by migrant parents in China from 2010 to 2014. It is nearly 22 percent of children in China. This side effect of urban development is seriously influencing the psychological and physical health of left-behind children. Yuan and Wang note the vital need for policy reform and practical strategies to solve this problem, including effective family interferences, community support, and schooling improvements.¹⁶⁴ Using data from the China Health and Nutrition Survey (CHNS), Li *et al.* explore that left-behind children are 20 percent likely to get sick or have chronic disorders than those children living with their parents. Girls are more vulnerable than boys, and younger children are more vulnerable than older ones.¹⁶⁵ Based on literature review of 53 items between 2001 and 2008, Qin and Albin also underscore that separating with their parents may influence the psychological health of left-behind

¹⁶³ Alan C. Neal. "Implementing ILO Fundamental Labour Rights in China: A Sensitive Meeting of Form and Substance?" in Ulla, Liukkunen, and Chen, Yifeng. *Fundamental Labour Rights in China - Legal Implementation and Cultural Logic*. Volume 49, New York: Springer, 2016.

¹⁶⁴ Yuan Peng and Wang Long, "Migrant Workers: China Boom Leaves Children Behind," *Nature* 529 (England, 2016).

¹⁶⁵ Qiang Li, Gordon Liu and Wenbin Zang, "The Health of Left-behind Children in Rural China," *China Economic Review* 5 (2015).

children in a quite negative way, especially their emotions and social behavior.¹⁶⁶

Some literature draws focus to aging migrant workers. For instance, Liu applies the concept of care circulation¹⁶⁷ to the care of aged people in rural China. He examines the multidirectional and asymmetrical exchanges of caregiving and care-receiving upon ageing and familial care in rural China. He explores the mediating factors that influence the ways in which grown-up children take care of their parents and grand-parents. The major intervening factors include employment status, status of migration, family life-cycle of adult children, and family relations. These causes also contribute to the quality of care provided.¹⁶⁸

2.5 Summary

In short, there remains little literature that explores the popular legal culture of migrant workers in China. There also have not been enough studies that have paid attention to migrant workers in the construction industry, especially considering the size and importance of this group.¹⁶⁹ As an important social group with large population and

¹⁶⁶ Jiang Qin and Albin Björn, “The Mental Health of Children Left Behind in Rural China by Migrating Parents: a Literature Review,” *Journal of Public Mental Health* 9.3 (2010).

¹⁶⁷ This concept was brought out in Loretta Baldassar and Laura Merla, *Transnational Families, Migration and the Circulation of Care: Understanding Mobility and Absence in Family Life* (New York: Routledge, 2014).

¹⁶⁸ Jieyu Liu, “Ageing in Rural China: Migration and Care Circulation,” *The Journal of Chinese Sociology* 3 (Springer Berlin Heidelberg, Berlin/Heidelberg, 2016).

¹⁶⁹ Pun Ngai and Huilin Lu, “Neoliberalism, Urbanism, and the Plight of Construction Workers in China,”

increasing social influence, migrant construction workers' legal culture can help us to better understand the popular legal culture of Chinese people of contemporary China, and the interplay between Western norms and local values in the rapidly-changing society in China.

Chapter 3 Labour Contract

3.1 Introduction

On January 1, 2008, the Labour Contract Law¹ was enacted in China, together with other two important laws – the Labour Dispute Mediation and Arbitration Law,² and the Promoting Labour Employment Law.³ The new laws represent some of the most significant pieces of labour legislation in People’s Republic of China.⁴ They reflect the Chinese government’s recognition of the rising aspirations and expectations of China’s workers, and the political significance of ensuring fair employment practices to avoid labour unrest.⁵ They denote a milestone effort by the government to shift the balance of power in employment rights, away from employers and toward employees.⁶ The new law also went well beyond its predecessor in protecting workers’ rights, and enhancing their ability to seek adjudication of labour disputes.⁷

¹ Labour Contract Law, http://www.npc.gov.cn/wxzl/gongbao/2013-04/15/content_1811058.htm.

² Labour Dispute Mediation and Arbitration Law, http://www.gov.cn/flfg/2007-12/29/content_847310.htm.

³ Promoting Labour Employment Law, http://www.gov.cn/flfg/2007-08/31/content_732597.htm.

⁴ Jeffrey Becker and Manfred Elfstrom, “The Impact of China’s Labour Contract Law on Workers,” *International Labour Rights Forum* (May 12, 2010).

⁵ Mary Gallagher, John Giles, Albert Park, and Meiyang Wang, “China’s 2008 Labour Contract Law: Implementation and Implications for China’s Workers,” *Policy Research Working Paper* 6542, The World Bank Development Research Group Human Development and Public Services Team (July 2013).

⁶ Becker and Elfstrom, *supra* n. 4; Sean Cooney, Sarah Biddulph, Li Kungang, and Ying Zhu, “China’s New Labour Contract Law: Responding to the Growing Complexity of Labour Relations in the PRC,” *UNSW Law Journals* 30.3 (2007): 786.

⁷ Thomas F. Remington and Xiaowen Cui, “The Impact of the 2008 Labour Contract Law on Labour Disputes in China,” *Journal of East Asian Studies* 15 (2015): 271; Becker and Elfstrom, *supra* n. 4.

3.2 Background

3.2.1 *Heated Debate before Enforcement*

The National People's Congress suggested Labour Contract Law in 2005; it ratified it in 2007, and subsequently forced it on the nation at the beginning of 2008. Five months later, a complementary edict, the Labour Disputes Mediation and Arbitration Law, was adopted as well.⁸ The adoption of new labour regulations reflects the CPC government's aim to diminish social anxiety that developed as a result of China's economy becoming more liberal.⁹ Before the Labour Contract Law passed, entrepreneurs and many observers presented concerns that the law would raise labour costs, decrease employment, and undermine international competitiveness.¹⁰ For instance, Zhang Yin, the Chief Executive Officer of Nine Dragons Paper who also took part in the Chinese People's Political Consultative Conference, criticized this regulation that favoured open-ended contracts for employees.¹¹ The American Chamber of Commerce was apprehensive that these regulations would be administered more severely upon foreign-owned firms than on

⁸ Virginia E. Harper Ho, "From Contracts to Compliance? An Early Look at Implementation under China's New Labour Legislation," *Columbia Journal of Asian Law* 23(1) (2009): 36.

⁹ Remington and Cui, *supra* n. 7; Ching Kwan Lee and Yonghong Zhang, "The Power of Instability: The Microfoundations of Bargained Authoritarianism in China," *American Journal of Sociology* 118(6) (2013): 1475.

¹⁰ Mary Gallagher and Baohua Dong, "Legislating Harmony: Labour Law Reform in Contemporary China," in *From Iron-Rice Bowl to Informalization: Markets, Workers and the State in a Changing China* eds. Sarosh Kuruvilla, Ching Kwan Lee, and Mary Gallagher (New York: Cornell University Press, 2011).

¹¹ Zhang Yin, "The CPPC Members Propose to Abolish the Non-Fixed Term Labour Contract," March 2nd 2008, accessed May 2, 2015, <http://news.sina.com.cn/c/2008-03-02/033515055748.shtml>.

Chinese companies;¹² as a result, they lobbied to abolish the law.¹³ They warned that enacting the law might convince companies to turn to countries with less stringent laws.¹⁴

Academics held various opinions on the proposed legislation. Chang argued that it threatened the strong economy and increase unemployment.¹⁵ Some scholars argue that restricting organizations' ability to dismiss employees may prevent human resources from being used optimally, and that the regulation may increase the costs of operation while decreasing employees coming from abroad.¹⁶ Chen and Funke argued that the Labour Contract Law would affect employment only slightly, but that it would diminish employment inadvertently by increasing unit labour costs.¹⁷ The new labour regulations have also received significant attention from public and mass media. In 2006, the NPC received 190,000 public comments in a month-long consultation.¹⁸

After the Labour Contract Law was passed in 2007, employers used different methods to

¹² Richard B. Freeman and Xiaoying Li, "How Does China's New Labour Contract Law Affect Floating Workers?" *National Bureau of Economic Research Working Paper Series* (19253) (2013); Gallagher *et al. supra* n. 5.

¹³ SINA, "Foreign Firms are Against New Labour Contract Law Draft, and Threats to Withdraw Investment in China (2006)," accessed May 2, 2015, <http://finance.sina.com.cn/g/20060511/10112558951.shtml>.

¹⁴ Brendan Smith, Jeremy Brecher, and Tim Costello, *An Emerging Chinese Labour Movement* (New York: Routledge, 2007).

¹⁵ Steven Chang, *China's Economic System* (Beijing: CITIC Publishing Press, 2009).

¹⁶ Gallagher and Dong, *supra* n. 10.

¹⁷ Yu-Fu Chen and Michael Funke, "China's New Labour Contract Law: No Harm to Employment?" *BOFIT Discussion Papers* 29 (Institute for Economies in Transition, Bank of Finland).

¹⁸ Zhiping Liang, "What is Legislation for?" *Economic Law and Labour Law* 9 (2008): 19.

avoid their forthcoming legal obligations. For instance, some employers fired many workers and rehired them, in order to alter the start date of employment.¹⁹ Some companies forced workers to sign contract with inaccurate data, or in languages that the employees could not read. Other firms shut down and recommenced under new company names; others moved to inland provinces; and others folded without paying their employees.²⁰ Hence, labour disputes and protests have sharply increased.²¹

3.2.2 Major Changes in Labour Contract Law

The new Labour Contract Law initiated many significant changes.²² First, it mandated written contracts for all workers: employers who did not sign labour contracts within a month of employment were required to remunerate double salaries.²³ Second, employees that successfully completed two fixed-term contracts and those with a decade of employment were declared to have earned open-ended contracts; thus, they could only be terminated with just causes.²⁴ Many organizations utilized fixed-term contracts to terminate employees; thus, this restriction is important.²⁵ If an employee has not signed a

¹⁹ Hong Chen, “Thousands of Huawei Staff ‘Quit,’” *China Daily*, November 3, 2007, accessed May 28 2015, http://www.chinadaily.com.cn/bizchina/2007-11/03/content_6228248.htm.

²⁰ Becker and Elfstrom, *supra* n. 4; Jenny Chan, “Meaningful Progress or Illusory Reform? Analyzing China’s Labour Contract Law,” *New Labour Forum* 18.2 (2009): 43.

²¹ Ho, *supra* n. 8.

²² *Ibid*; Gallagher *et al.* *supra* n. 5; Jenny Chan, *supra* n. 20; Chen and Funkeb, *supra* n. 17; Remington and Cui, *supra* n. 7; Freeman and Li, *supra* n. 12.

²³ Labour Contract Law, Clause 82.

²⁴ Labour Contract Law, Clause 14.

²⁵ Gallagher *et al.* *supra* n. 5.

contract in 12-months' of employment, it is assumed that the two parties have entered an open-ended labour contract.²⁶ Third, the Labour Contract Law reconfirms existing work injury, social insurance, work conditions, and wage provisions.²⁷ Contracts must confirm these or workers have the opportunity to demand that their contract be renegotiated.²⁸ The Labour Contract Law also orders violators to pay default social insurance payments.²⁹ Moreover, Labour Contract Law devotes a section to the use of "dispatch" labour. It clarifies employers' responsibilities to workers, acquired through labour dispatch agencies, such as equal pay with permanent employees, and the role of unions and collective bargaining.³⁰ Since companies use the "dispatch" labour system to shirk their responsibilities to pay wages and social insurance, these changes are significant to protect dispatched workers' rights.³¹ The Labour Contract Law also directs government agencies to monitor that firms follow their legal duties to enrol employees into various types of social insurance.³²

These new labour regulations in China are very strict compared with other countries, even with the developed countries.³³ Using the standard of Employment Protection Legislation (EPL) of OECD, the PRC obtained a score of 3.2 out of 3.5, places the third

²⁶ Labour Contract Law, Clause 14.

²⁷ Labour Contract Law, Clause 17, 38, 74.

²⁸ Labour Contract Law, Clause 18.

²⁹ Labour Contract Law, Clause 38, 46.

³⁰ Labour Contract Law, Clause 4, 43, 51, 53, 54, 58, 67, 92.

³¹ Remington and Cui, *supra* n. 7.

³² Labour Contract Law, Clause 74.

³³ Gallagher *et al.* *supra* n. 5.

place of all OECD nations, as a result of the Labour Contract Law.³⁴ However, some studies challenge that the new Labour Contract Law does not actually provide employees with greater rights; rather, it elucidates existing rights and increases legal sanctions against employers found in violation.³⁵

3.2.3 Individual Contract or Collective Contract

China enacted the Labour Contract Law to manage an intense increase in labour protests and unrest that have developed since the 1990s.³⁶ A 2007 ACFTU survey determined that around 12 percent of participants had been involved in labour disputes.³⁷ From 2001 to 2008, collective labour disputes increased at a rate of 11 percent every year.³⁸ For the Chinese regime, collective labour disputes have the potential to become politically-oriented demonstrations; the government is strongly opposed to any type of collective action.³⁹ Some literature explores that a significant aspect of the Labour Contract Law was to resolve labour disputes peacefully and individually before they

³⁴ OECD, OECD Indicators of Employment Protection.

<http://www.oecd.org/employment/emp/oecdindicatorsofemploymentprotection.htm>. Accessed on June 10, 2017.

³⁵ Remington and Cui, *supra* n. 7.

³⁶ *Ibid*; Gallagher *et al. supra* n. 5.

³⁷ Mingwei Liu, "Conflict Resolution in China," In *The Oxford Handbook of Conflict Management in Organizations* eds. William K. Roche, Paul Teague, and Alexander J. S. Colvin (Oxford: Oxford University Press, 2014), 488.

³⁸ Wang Jing, "Collective Consultation and Labour's Collective Rights in China," *ILERA 16th World Congress*, 2012.

³⁹ King, Pan and Roberts, *supra* n. 4.

become collective conflicts.⁴⁰ The Labour Contract Law reflects the regime's preference for individual contracts. It does not mention collective bargaining, instead referring to collective consultation (jiti xieshang).⁴¹ In practice, collective contracts can arise on a regional or industrial basis,⁴² providing a general framework, and suggesting minimum criteria for compensation and employment environments.⁴³ Moreover, the regime did not provide political independence to groups like unions, media, or political parties.⁴⁴ It did not move toward a system of collective bargaining between organized labour and employers' associations.⁴⁵

3.2.4 Impacts of Labour Contract Law

To date, there remains disagreement on the impacts of Labour Contract Law in China. Much literature claims that labour regulations would decrease employment and competitiveness in developing countries.⁴⁶ Some studies argue that stringent administration of labour rules increases the price of formal employment, resulting in

⁴⁰ Remington and Cui, *supra* n. 7; Lee and Zhang, *supra* n. 9.

⁴¹ Labour Contract Law, Clause 51.

⁴² Labour Contract Law, Clause 53.

⁴³ Tim Pringle, *Trade Unions in China: The Challenge of Labour Unrest* (London: Routledge, 2011), 117.

⁴⁴ Remington and Cui, *supra* n. 7.

⁴⁵ Remington and Cui, *supra* n. 7.

⁴⁶ Timothy Besley and Robin Burgess, "Can Labour Regulations Hinder Economic Performance? Evidence from India," *The Quarterly Journal of Economics* 119 (2004): 91; Horst Feldmann, "The Unemployment Effects of Labour Regulation around the World," *Journal of Comparative Economics* 37 (2009): 76; Simeon Djankov and Rita Ramalho, "Employment Laws in Developing Countries," *Journal of Comparative Economics* 37 (2009): 3.

more casual employment.⁴⁷ Some literature suggests that the new regulations have made considerable impacts on employment relations in China.⁴⁸ A growing number of workers are aware of the new labour laws; the proportion of employees protected by labour contracts increased significantly; and the recent rules led to a dramatic increase in disputes files by employees.⁴⁹ However, other scholars believe that the actual effect of the Labour Contract Law cannot be calculated specifically. Given that labour legislations in the past gave rise to the frequent use of informal labour, many question if the recent law has been implemented in a concrete manner.⁵⁰ As Gallagher observes, the Labour Contract Law seems “aspirational.”⁵¹

There are some empirical studies that consider the impacts of the Labour Contract Law. For instance, based on cross-sectional surveys of workers in the Pearl River Delta, Li *et al.* find that the Labour Contract Law increased the quantity of employees with binding agreements, elevated the levels of social insurance, and diminished violations of workers’ rights. Li *et al.* conclude that the Labour Contract Law does not escalate costs of companies that adhere to regulations, and it aids to develop an organized system.⁵²

⁴⁷ Rita Almeida and Pedro Carneiro, “Enforcement of Labour Regulation, Informal Labour, and Firm Performance,” *World Bank Policy Research Working Paper 3756* (2005); Chen and Funkeb, *supra* n. 17.

⁴⁸ Gallagher *et al.* *supra* n. 5; Remington and Cui, *supra* n. 7.

⁴⁹ Gallagher *et al.* *ibid*; Remington and Cui, *ibid*.

⁵⁰ Remington and Cui, *ibid*.

⁵¹ Mary E. Gallagher, “China’s Workers Movements and the End of the Rapid-Growth Era,” *Daedalus* 143.2 (2014): 81.

⁵² Gang Li, Keting Shen, and Chaoxian Guo, “Road to Enhance the Competitiveness of China’s Labour-intensive Industries – A Survey after the Implementation of “China’s New Labour Contract Law,”

Cheng and Yang surveyed six hundred human resource managers to determine that the Labour Contract Law increases the potential of employees inking labour contracts, increases their length, the amount of open-ended labour contracts, and results in sharper employee evaluation. In addition, it augments labour expenses and inhibits labour flexibility. Meanwhile, the new regulations' effects differ considerably in organizations of diverging size.⁵³ Freeman and Li conducted cross-sectional surveys of migrant workers in Pearl River Delta in 2006, 2008, and 2009, and find that the new law greatly increased the likelihood that migrant workers obtained a written contract, as well as social insurance and unions at their workplace, and were less likely to experience wage arrears.⁵⁴ Gallagher *et al.* conclude that the Chinese governments have worked to implement the Labour Contract Law, and highlight that application of it varies tremendously across provinces. They underline that higher educational attainment is highly associated with citizens' belief that labour regulations are enforced, especially among those who graduate from college.⁵⁵

Other empirical studies provide less positive findings. From interviewing over three hundred workers in the Pearl River Delta and the Yangtze River Delta, Becker and

China Industrial Economics 9 (2009): 37.

⁵³ Yanyuan Cheng and Yang Liu, "The Impact of Labour Contract Law's Enforcement on Chinese Enterprises' Human Resources Management – Based on the Perspective of HR Managers," *Economic Theory and Business Management* 7 (2010), 66.

⁵⁴ Freeman and Li, *supra* n. 12.

⁵⁵ Gallagher *et al. supra* n. 5.

Elfstrom indicate that more of them have inked contracts since the new law was enacted, but that the total of people with formal contracts remains slight compared to other areas. Many people divulged that their contracts did not have all the provisions that the law demands. Becker and Elfstrom also noted that the regulation has helped the aging population more than it has helped the upcoming workforce.⁵⁶ Based on a survey of working conditions in the several Yangtze River Delta cities, Wang also provided unsatisfying discoveries. 46.3 percent of workers in Wenzhou did not have a contract.⁵⁷ Some literature contends that if the Labour Contract Law aims to prevent more confrontational collective labour unrests, then the results are effective to some extent. Wildcat strikes endure. At the beginning of 2015, the China Labour Bulletin reported that in the year-to-year comparison, there had been triple the amount of strikes.⁵⁸

So far, most of the literature regarding implementation of the new Labour Contract Law focuses on workers in the Pearl River Delta, and in big cities, including Beijing and Shanghai. The majority of the empirical surveys are cross-sectional and cross-provincial. Seldom does research concentrate on a specific industry. Fewer studies have been conducted of migrant workers came from the same province. However, the implementation of Labour Contract Law varies greatly from industry to industry, and

⁵⁶ Becker and Elfstrom, *supra* n. 4.

⁵⁷ Wang Chen, “An Investigation of the Conditions of Rural Migrant Workers’ Rights during the Financial Crisis” (Jinrong weiji beijing xiade nongmingong quanyi zhuangkuang diaocha), *Labour Law Review* (2009).

⁵⁸ *Economist*, “Out Brothers, Out!” January 15, 2015.

from region to region due to various economic situations and cultures. Moreover, the original legal culture of migrant workers came from different hometown also varies considerably. Hence, this study focuses on the migrant construction workers who all came from the same hometown, Shuangfeng County, Xiaogan, Hubei Province, and elaborates their legal culture regarding the Labour Contract Law, and related legal reform and legal system in China.

3.3 Subcontracting System

When exploring the construction migrant workers' legal culture, it is critical to explore the highly-exploitative subcontracting system in the construction industry in contemporary China.⁵⁹ In the market economic reform, in order to reduce production and management costs and increase efficiency, labour services have been gradually stripped from construction companies, and hence the separation of management and labour services has led to this subcontracting system emerged.⁶⁰ Pun and Lu indicate that the subcontracting structure is comprised of two practices: the swift commodification of labour through non-industrial social relations organized in rural areas; and the urban

⁵⁹ Ngai Pun and Huilin Lu, "A Culture of Violence: the Labour Subcontracting System and Collective Action by Construction Workers in Post-Socialist China," *The China Journal* 64 (July 2010); Guang Lei, "The Market as Social Convention: Rural Migrants and the Making of China's Home Renovation Market," *Critical Asian Studies* 37.3 (2005): 391; Yuan Shen, *Market, Class, and Society (Shichang, Jieji yu shehui)* (Beijing: China Social Sciences Publishing House, 2007), 216.

⁶⁰ Heping Yan, Lujun Chang and Junbo Chang, "Research on the Mechanism of Labour Subcontracting in construction (Jianzhu Shigong Laowu Fenbao Jizhi Yanjiu)," *Construction Management Modernization (Jianzhu Guanli Xiandaihua)* (2004).

expropriation of labour at the time of manufacture. This subcontracting system results in endless processes of organizations being behind on their payroll and fierce disputes of production employees.⁶¹

3.3.1 Lu Ban Temple – Guild System in Ancient China

Before the 19th century, construction workers in China belonged to a guild, the Lu Ban Temple.⁶² Guild members were excluded from the proletariat category, because their relationship to their employers was not capitalist, but rather feudal.⁶³ The guild's fundamental goal was to shelter its members from the treacherous environment. To increase cooperation and avoid competition between masters, apprentices were distinctly limited.⁶⁴ They introduced high criteria for internship, resources, manufacturing, and marketing; in order to enable its members to reduce costs and compete unfairly with the “outsiders.”⁶⁵ Shaffer suggests that the ideological rationale of such unions was one of strongest adhesives in Chinese culture: the family ethic. Construction masters believed they were descendants of the mythical Lu Ban. Guild masters were parents, and

⁶¹ Pun and Lu, *supra* n. 59.

⁶² Lynda Shaffer, “Mao Ze-dong and the October 1922 Changsha Construction Workers’ Strike,” *Modern China* 4.4 (1978): 383.

⁶³ Jean Chesneaux, “*The Chinese Labour Movement, 1919-1927*” Translated by H. M. Wright (Stanford: Stanford University Press, 1968).

⁶⁴ Shaffer, *supra* n. 62.

⁶⁵ Hosea Ballou Morse, *The Gilds of China: with an Account of the Gild Merchant or Co-hong of Canton* (New York: Russell and Russell, 1967), 3.

apprentices were adopted children.⁶⁶ For over a thousand years, such guilds were influential, until free traders arose in the nineteenth century.⁶⁷

Around the middle of the 19th century, the labour subcontracting system was introduced into China. The Western construction companies commenced employing rural people by subcontracting; local companies also started to employ it after 1880.⁶⁸ Hence, the guild system was weakened. Some masters became entrepreneurs, and journeymen became employees.⁶⁹ The new entrepreneurs made good money, while journeymen earned only 10 cents per day in 1922.⁷⁰ Journeymen realized that they were proletarians, and their guilds did not represent or protect their interests any longer. In October 1922, four thousand construction workers implemented a strike and developed the Changsha Construction Workers' Union. Mao Zedong was the leader of this campaign.⁷¹

3.3.2 State-Owned Construction Enterprises since 1949

From 1949 to the end of 1970s, the state-owned enterprises were the major force in the

⁶⁶ Rui Li, *The Early Revolutionary Activities of Comrade Mao Ze-dong (Mao Ze-dong Tongzhi de Chuqi Geming Huodong)*. (Beijing: Zhongguo Qingnian Chubanshe, 1957).

⁶⁷ Shaffer, *supra* n. 62.

⁶⁸ Youjie Lu and Paul W. Fox, "The Construction Industry in China: Its Image, Employment Prospects and Skill Requirements," *International Labour Organization*, Geneva (October 2001), 13.

⁶⁹ Gail Hershatter, *The Workers of Tianjin, 1900-1949* (Stanford: Stanford University Press, 1986), 101-104.

⁷⁰ *Ibid*; Shaohua Li, "Mao Zedong and Changsha Construction Workers' Strike (Mao Zedong he Changsha Nimu Gongren Da Bagong)," *Hunan Workers' Daily*, November 20th, 2013, access July 8, 2015, http://media.worker.cn/sites/media/hngrb/2013_11/20/GR0103.htm.

⁷¹ Hershatter, *supra* n. 69; Shaffer, *supra* n. 62.

construction industry in China, and the subcontracting system was ended. From 1949, one of the primary challenges for the government was to rebuild the war-torn cities. There was a serious deficit of skilled construction workers; therefore, the State Council used labour from the People's Liberation Army. Multiple army divisions were amalgamated into government-owned enterprises, and they became the most influential pillars of the nation's industry.⁷² From 1949 to the late 1980s, the SOEs dominated industrial production in China. They guaranteed lifetime employment, and provided welfare from "cradle to grave" for urban industrial employees. This was labeled as the "iron rice-bowl" (tie fan wan) system.⁷³ By 1980, of the ten million construction employees, approximately half worked for the state while the other half worked for collectives. Less than 10,000 employees worked for private companies, accounting for only 1% of the industry.⁷⁴ Employees of collectives typically had reduced security and remunerations compared with SOE workers; however, they also enjoyed regular payment and reasonable working hours.⁷⁵

In the fieldwork, I found that construction work was regarded as a highly-skilled and respected job before the market economic reform initiated from 1978. It was nice to be pulled from rural villages to work in the construction industry. As Hongliang, born in

⁷² Ministry of Construction of PRC, *Report on the Fifty Years of New China's Construction Industry (Xin Zhongguo jianzhu ye wushi nian)* (Beijing: China Three Gorges Press, 2000), 3.

⁷³ Hong Yung Lee, "Xiagang, the Chinese Style of Laying Off Workers," *Asian Survey* 40.6 (2000): 914.

⁷⁴ *Ibid* n. 73.

⁷⁵ Pun and Lu, *supra* n. 59.

1965, told me,

I went to build Gezhouba Dam right after I graduated from middle school. We worked for the People's Commune, and were paid more than 2 yuan per day. You know, when we worked in our village, we could only make a few cents every day! That was a very good job! They never default our wages. It was the People's Commune, you know! It was not easy to find such a job. You need to have Guanxi!⁷⁶

3.3.3 Lubuge Project in 1980

Since the late 1980s, Chinese economic reform has altered industrial relations. The 'iron rice-bowl' system was broken. Millions of employees have been terminated by SOEs. The unitary, state-dominated ownership system was broken by diversified ownership forms, including foreign, joint-venture and private companies.⁷⁷ Furthermore, the workforce is increasingly diverse. Millions of migrant workers poured into more developed urban areas looking for extra income.⁷⁸ "Contract workers" and "temporary workers" have overcome "permanent workers" as the dominant feature in employment.⁷⁹

The economic reform also led to the end of socialist labour relations in the construction industry ever since the beginning of 1980s. The goals of reform in the construction industry included restructuring the management system, opening construction markets,

⁷⁶ Juan Li, (December 28, 2014), Personal Interview.

⁷⁷ Yongshun Cai, *State and Laid-off Workers in Reform China: the Silence and Collective Action of the Retrenched* (Oxford: Routledge, 2006); Cherrie Jihua Zhu, *Human Resource Management in China, Past, Current and Future HR Practices in the Industrial Sector* (Oxford: Routledge Curzon, 2005).

⁷⁸ Liren Shen, *Chinese Migrant Workers (Zhongguo Nongmingong)* (Beijing, Democracy and Construction Press, 2005).

⁷⁹ Zhu, *supra* n. 77.

allowing autonomy in SOEs, and establishing a competitive bidding system.⁸⁰ In 1980, a World Bank project, Lubuge Hydropower in Yunnan Province, challenged socialist practices by employing international competitive bidding system and labour subcontracting system.⁸¹ These experiences have impacted the entire construction industry, and were considered useful for reducing costs, ensuring quality, and increasing project management capability.⁸²

In 1984, the State Council issued an important document, “*Tentative Provisions for Construction Industry and Basic Administration System Reform*.”⁸³ It clearly stated that, an investment-responsibility-system and a bidding-contract-system must be fully implemented in the construction industry.⁸⁴ In its third clause, the *Tentative Provisions* stated, “The contracting enterprises that accept the commissions from the awarding unit, or win bids, can general contract the whole project or contract parts of the project, including survey, research, design, purchase, engineering construction, installing, testing, and putting into production.”⁸⁵ The thirteenth clause required the state-owned

⁸⁰ Richard E. Mayo and Gong Liu, “Reform Agenda of Chinese Construction Industry,” *Journal of Construction Engineering and Management* 121.1 (1995): 80.

⁸¹ Lei Guang, “The Market as Social Convention: Rural Migrants and the Making of China’s Home Renovation Market,” *Critical Asian Studies* 37.3 (2005): 391.

⁸² China Construction Industry Association, *China Construction Industry Development Strategy and Industrial Policy Research Report (Zhongguo Jianzhuyue Fazhan Zhanlue yu Chanye Zhengce Yanjiu Baogao)* (Beijing: Construction Industry Publishing, 2005), 6.

⁸³ *Tentative Provisions for Construction Industry and Basic Administration System Reform*, <http://www.people.com.cn/item/flfgk/gwyfg/1984/112501198402.html>.

⁸⁴ *Ibid*, Clause 1 and Clause 2.

⁸⁵ *Ibid*, Clause 3.

construction enterprises gradually reduce the proportion of fixed workers, and shall not recruit fixed workers in future, except necessary technicians.⁸⁶

These political and legal changes led to a boom of subcontracting system in the construction industry since the end of 1980s. The top-tier contractors control the developmental initiatives as a result of their associations with governments. They outsource different work to lower-tier subcontractors in different sectors, and transfer financial risks and labour recruitment to the subcontractors.⁸⁷ The developers and general contractors normally do not make bulk payments to contractors until the project is mostly completed, while the subcontractors are normally have limited financial capability, and could not achieve loans from banks. Hence subcontractors often face serious payment arrears from the very beginning of the contracting process. The labour subcontractors who are at bottom tier of this subcontracting system would only be paid when the general contractor and all the subcontractors at higher tiers have been paid. They certainly would not pay workers until they are paid.⁸⁸ Therefore, wage arrears remain so common in the construction industry that migrant workers normally take this for granted.

⁸⁶ *Ibid*, Clause 13.

⁸⁷ Pun and Lu, *supra* n. 59

⁸⁸ *Ibid*.

3.3.4 Autonomous System Built by Xiaogan People

In the highly-exploitative and multi-tier subcontracting system in the construction industry in China, the migrant construction workers from Xiaogan have been using their traditional strategies to protect their own interest, and to make their weak voices been heard by unifying. In the past more than thirty years, Xiaogan people have established a national-wide network in the construction industry. By May 2013, there were more than 400,000 Xiaogan people working actively at all levels in the construction industry all around China.⁸⁹ There are Xiaogan developers, general contractors, sub-contractors, labour contractors, site-managers, material and facilities suppliers, logistics, and all kinds of labourers.⁹⁰ This national-wide network is effective and exclusive, and is almost an autonomous system in the construction industry.

Most migrant construction workers only choose to work for Xiaogan bosses. Their reason is quite straightforward: Because they know the boss, and know where his house is, if their wages are defaulted, they know where to ask for their money. Normally, the migrant workers are quite confident that the bosses will bring cash to them by December 28th of the lunar year. For instance, as Hongliang explained, “I never work for an ‘outsider’ boss.

⁸⁹ Changjiang Times, “There are Xiaogan Plasterers in Every Building in the Northeast (Dongbei Meidong Lou Dou You Xiaogan Niwajiang),” May 2nd, 2013, accessed May 30th, 2016, <http://www.changjiangtimes.com/2013/05/441741.html>.

⁹⁰ Housing and Urban-Rural Development of Hubei, “Ten Construction Brands from Hubei are Well Known,” *Hubei Daily*, Page 8, January 17th, 2014, accessed April 26th, 2015, <http://news.cnhubei.com/hbrb/hbrbglk/hbrb08/201201/t1952689.shtml>.

What if he runs away? How could I find him and get my money back? Not only me, but also my son and my brothers. We all only work for Xiaogan bosses.”⁹¹ Some construction workers change bosses frequently; but nearly all their bosses are Xiaogan people. For instance, Peng said, “I normally work for 7 to 8 bosses within one year, back and forth. Who has good projects, I went to whom. All these bosses are Xiaogan people. There are many Xiaogan bosses in Northeast.”⁹² Xinghong also told me, “As far as I know, there are at least 40 Xiaogan bosses working in Huhehaote. I also know more than 40 Xiaogan bosses in Xi’an. You know, Xiaogan is the hometown of plasterers.”⁹³ What is more important, it is much harder to ask wages back if the boss is an “outsider.” Many workers have tried, but they gave up and came back their autonomous system. For instance, Xiaohua, one of the three high school graduates, worked for a boss from Anhui Province in Ningbo city in 2014, however, he had not received his wages when the interview was taken. Xiaohua started to be concerned about it, and he told me that he would go to Ningbo if the wages would not be received in another week. Although he was confident that he would be paid because the general contractor was a big company and would pay off his wages if he went there, the back-and-forth travel would cost a lot. Xiaohua was kind of regretful, and told me that he probably would not choose to work for outsiders.

⁹¹ Juan Li, (2014, December 28th), Personal Interview.

⁹² Juan Li, (2015, January 21st), Personal Interview.

⁹³ Juan Li, (2015, February 5th), Personal Interview.

The same is true for the other side of the coin, as Xiaogan bosses prefer to hire their co-villagers because of less financial pressure and mutual trust. In the construction industry, there is a well-accepted “custom” that workers get paid when the project is completed. But when workers and subcontractors are both from Xiaogan, there is a consensus that workers would get paid by the end of the lunar year. This long-term payment greatly relieves the financial burden of Xiaogan bosses. In contrast, if the migrant workers work for “outsider” bosses, their requirements of payment became quite harsh. They normally require the outsider bosses to pay in cash every day, and if the boss defaults on their wages for even one single day, the migrant worker would leave immediately. As Bo said, “If they don’t pay us today, no one would show up on site tomorrow!”⁹⁴ It is doubtless that contractors and subcontractors do not want such harsh payment terms, and thus they all prefer to recruit their co-villagers.

Thanks to this nation-wide network and convenient communication within their autonomous system, Xiaogan plasterers have gradually established their reputation in the construction industry in China, especially in the Northeast areas. Xiaogan plasterers are famous because of their outstanding skills, hard work, and efficiency.⁹⁵ What is more important, when a project is in a short deadline, hiring Xiaogan plasterers is the best choice. It is easy to gather dozens of skilled Xiaogan plasterers in a short time, and to

⁹⁴ Juan Li, (2015, January 21st), Personal Interview.

⁹⁵ Changjiang Times, *supra* n. 89.

guarantee to complete the project on time. As Peng stated proudly, “If the payment is good, we can call our friends and relatives to come to help! No matter how rushed the deadline is, we can do it. Only we Xiaogan plasterers can guarantee this!”⁹⁶

This powerful autonomous system of Xiaogan people in the construction industry provides protections for migrant workers at the lowest cost, and strong support for Xiaogan bosses; it also maximizes the profit and interest for both parties in long term. It is the essential foundation of the booming development of the construction sector in Xiaogan area. This autonomous system is built based on family relationship, and the major rule within this system is family ethic and morality, rather than the notion of rule of law, or any contract.

3.4 Migrant Construction Workers’ Legal Culture Regarding Labour Contracts

Compared to the past empirical studies, this study provides more negative findings with respect to the enforcement of Labour Contract Law. Among the 34 interviewees, 27 migrant construction workers have never signed any labour contract. Only 6 interviewees had ever signed labour contracts. Another interviewee signed one labour contract in 2012, but it turned out to be a fraud. This interviewee was cheated by a Xiaogan labour

⁹⁶ Juan Li, (2015, January 21st), Personal Interview.

subcontractor to work in Africa barely with any payment and had to stay there for nearly six months. Among these 6 participants who were covered by valid labour contracts, 4 signed labour contracts in Beijing, and 2 in Guangdong Province (See Table 3.1). 5 out of these 6 interviewees had only signed a labour contract once, and only one participant, Hongliang, had signed more than one labour contract. Only Guohui and Jinyun, who were both site managers and signed their labour contracts in Guangdong Province, read the content, and kept the copies. All the other four interviewees who had signed labour contracts had never read them, and did not keep any copies. Considering the large number of construction projects in which each interviewee has participated, the rate of signing labour contract in the construction industry is astonishingly low, even by at the beginning of 2015, seven years after the Labour Contract Law was enforced.

Table 3.1: Basic Information of the Interviewees Covered by Labour Contracts

Name	Year of birth	Education achievement	Marriage status	positions	How many labour contracts they have signed	In which city signed labour contracts
Jinyun	1961	High School	Married	Site manager	Once	Huizhou (Guangdong)
Guohui	1964	Middle School	Married	Site manager	Once	Dongguan (Guangdong)
Hongliang	1965	Middle School	Married	Plasterer's assistant	More than once	Beijing
Aiguo	1968	Middle School	Married	Plasterer	Once	Beijing
Jie	1988	Middle School	Married	Plasterer	Once	Beijing
Zhao	1990	Middle School	Never married	Plasterer	Once	Beijing

3.4.1 Labour Contracts: Important or Unnecessary?

It is somewhat surprising how negative migrant workers' attitudes were towards labour contracts, given that the Labour Contract Law of China has been enforced for seven years. Among the 34 migrant construction workers I interviewed, only three stated that labour contracts were useful and important: Hongliang, Hongbing, and Jie. Hongliang is Hongbing's elder brother, and Jie's father. In other words, only the members of one family felt this way. Of the three, Hongliang demonstrated the most positive attitude with respect to labour contracts. He claimed,

A labour contract is useful, of course! With a contract, even if the little boss runs away, we can go to the company to ask for wages. Without a contract, how can the company know who we are? With the contracts, I am not afraid even if the boss runs away. The boss runs away, the company is still there; if the company runs away, the developer is still there; even if the developer runs away, the Labour Bureau is always there! The developer's deposit is still in the Labour Bureau.⁹⁷

Jie, Hongliang's son, signed his only labour contract in Beijing, while Hongbing had never signed any labour contract. Jie and Hongbing's attitudes are not as positive as Hongliang's. They both thought it was good to be covered by labour contracts; however, both primarily work in the Northeast, where labour contracts are uncommon, but income is higher. As Jie explained, "A labour contract is important, but not as important as money, of course." This is a sentiment with which Hongliang agreed.

⁹⁷ Juan Li, (2014, December 28th), Personal Interview.

Besides Hongliang's family, all of the other interviewees thought that labour contracts were unnecessary and unimportant, even those who had signed labour contracts, and who presumably could have benefited from them. For instance, Zhao, born in 1990, signed a labour contract once in Beijing. However, he did not read its content, did not keep a copy of the contract, and did not seem to care. As he described, "We went into the (manager's) office, signed the contract, and left. They told us where to sign, and that's where we signed. We don't keep one, and we don't read it. It does not matter. Our jobs are not dangerous anyway."⁹⁸ Zhao believed that labour contract was only a compulsory procedure required by the formal company, and migrant workers did not need it.

Some rural youth who preferred odd jobs in the Northeast even thought that labour contracts placed restrictions on workers, rather than protecting them. Because of the unstable nature of their construction work, they did not want to make long-term promises to bosses. They were afraid that labour contracts would bring trouble. For instance, Peng said, "It (labour contract) is totally unnecessary! We don't know how many days we will work for this boss, then what is the point to sign a labour contract? What if we want to leave earlier? It is like a restriction for us!"⁹⁹ It is certain that the unstable nature of construction jobs also greatly devalued the importance of labour contract in this industry.

⁹⁸ Juan Li, (2015, January 7th), Personal Interview.

⁹⁹ Juan Li, (2015, January 21st), Personal Interview.

3.4.2 The Most Influential Factor – Host City

According to the primary data, the most influential factor in whether a construction migrant worker is covered by a labour contract is the host city in which the interviewee works. Migrant construction workers working in Beijing and Guangdong Province have more chance of being covered by labour contracts, especially those in Beijing. For instance, Hongliang, who worked in Beijing during 2014, said that he signed labour contracts for every project he worked, except one “informal” project, building a private kindergarten. Hongliang believed the reason why the Beijing local government paid more attention to labour rights was because it was more “scared” of labour unrest than governments in other areas; “It is Beijing, you know!”¹⁰⁰ Along similar lines, Hongliang believed that the political and legal changes to the construction industry were the result of workers’ constant struggle.¹⁰¹

To clarify, “formal” (Zhenggui¹⁰²) is a laudatory word that was frequently heard during my fieldwork. The migrant workers often used this word to praise enterprises that operate more like SOEs, for which they had never worked because of household registration system restrictions, and towards which they expressed mixed feelings of admiration and awe. If they ever worked in projects contracted by large, state-owned construction companies, such as those ten State-owned Construction Bureaus of China, they felt a

¹⁰⁰ Juan Li, (2014, December 28th), Personal Interview.

¹⁰¹ *Ibid.*

¹⁰² 正规

sense of pride, and often mentioned these experiences in their interviews. As such, when describing an enterprise as “formal,” respondents tended to mean that the enterprise had a good relationship with local governments, had sufficient funds, the capability to contract construction projects, or subcontract big parts of projects, and, most importantly, paid workers on time and in full.

In contrast, “informal” (*bu zhenggui*¹⁰³) was often used as a derogatory term to criticize small private companies with limited financial capability, and limited “*guanxi*” with governments. These small private enterprises normally can only subcontract small parts of projects, and sometimes cannot get their own payment from contractors, let alone pay workers’ wages. Respondents expressed feelings of disdain towards these informal companies, referring to their owners as “little bosses.” Unfortunately, in most circumstances, migrant construction workers have to work for the “informal” “little bosses,” because both are at the lowest tier of the subcontracting system in this industry.

All the other factors, including education background, age and marriage status, seem to have limited influence on migrant construction workers’ legal culture regarding labour contract. For instance, As Gallagher *et. al.* explain, higher educational attainment is strongly associated with perceptions of better labour regulations enforcement, especially for those who graduated from college. Education strongly predicts whether or not a

¹⁰³ 不正规

migrant worker will have a labour contract.¹⁰⁴ However, according to the primary data collected from Xiaogan area, education does not have an obvious impact on the chances of Xiaogan construction workers covered by labour contracts. Only one of three high school graduates had signed a labour contract once, and neither of the remaining two had. Gallagher *et. al.* also suggest that age is a relatively unimportant factor,¹⁰⁵ and empirical data from this study supports this conclusion. Of the six migrant workers who had previously signed labour contracts, their ages varied widely. Four of them were born in the 1960s, one was born in 1988, and one in 1990. As such, there is no evidence that the chance of signing labour contract varies among different age groups. In addition, marital status is also as an unrelated factor.

3.4.3 Generation Differences

According to the primary data, age seems an unrelated factor to migrant construction workers' legal culture regarding labour contracts and related legal system. But there are still some interesting generation differences among the construction migrant workers. The “new generation migrant workers” normally refers to the migrant workers born after 1980, and older than 16.¹⁰⁶ Among the 34 interviewees, there are ten born after 1980. In much literature in this area, the new generation migrant workers are described as the first

¹⁰⁴ Gallagher *et al. supra* n. 5.

¹⁰⁵ *Ibid.*

¹⁰⁶ Gongcheng Zheng and Ruolian Huang, *Chinese Migrant Workers: Issues and Social Protection (Zhongguo nongmingong wenti yu shehui baohu)* (Beijing: Renmin chubanshe, People Press, 2007).

generation to grow up in prosperity, without worrying about food and shelter. Many of them have never laid down roots, and they tend to be better educated than the elder generation of migrant workers.¹⁰⁷ Only a small part of these descriptions are supported by the primary data of this study.

According to the first hand data, the new generation migrant workers do have much less farming experiences than the older generation. Nine out of ten participants born after 1980 have never done any farm work, while all the older generation migrants had farming experiences. The only exception to the new generation, Zhiliang, was born in 1981. He claimed that he did a little farm work after graduation from middle school. In fact, Zhiliang believed that the year dividing “new generation” and “old generation” should be 1985, rather than 1980. He insisted that the rural residents born between 1980 and 1985 shared few differences from those born in 1970s, while the rural youth born after 1985 were quite different. Zhiliang said, “We are definitely different from them, those post-85s. Most of them cannot endure hardship, and they spend more than their income. They are boomerang children. We are more like the post-70s. We work hard, and take more family responsibilities.” Zhiliang mentioned the word “responsibility” many times in the

¹⁰⁷ *China Review News*, “Han Changfu, Secretary of Agriculture Ministry Talks about New Generation of Migrant Workers,” *China Review News*, February 1 2010, accessed June 6 2015, <http://mag.chinareviewnews.com/doc/1012/1/6/9/101216949.html?coluid=7&kindid=0&docid=101216949&mdate=0201144628>; also Mingxin Bi, “Young Migrants Settle for Life in the City,” *China Daily*, February 26, 2008, accessed June 6 2015, http://news.xinhuanet.com/english/2008-02/26/content_7671827.htm; also Andy Xie, “Dismantling Factories in a Dreamweaver Nation,” *Caixin Online*, June 7, 2010, accessed June 6 2015, http://english.caing.com/2010-06-07/100150460_2.html.

interview.¹⁰⁸

Zhiliang's opinions were only partly echoed by other interviewees. Among the nine participants born after 1985, five of them claimed that they had been taking care of their parents or kids, and were under a lot of pressure. The other four interviewees were in better family and financial conditions, which meant that their parents were healthy, their fathers – or both parents – were still actively working on construction sites, their wedding houses had been built and decorated, and they as yet had no kids. They do spend more than the older generation, and cannot save much.

During my fieldwork, I found two noticeable differences between the two generations of migrant workers. The first difference is the reasons of migration. All the interviewees born before 1980 migrated because of land shortage and poverty; while the rural youth gave different answers. Kai, born in 1990, said that he went to work in some electronic factories in Shenzhen and Dongguan after he graduated from middle school, in order to find a girlfriend. He went together with four friends, all at his age, and all aimed to find dates in those factories, because they heard that there were many girls working there and much fewer boys. Kai told me, "I had a girlfriend there. It was an experience. But I married a girl from my hometown. It is better to marry someone from the same place."¹⁰⁹

¹⁰⁸ See Juan Li, (2015, January 9th), Personal Interview.

¹⁰⁹ See Juan Li, (2015, January 18th), Personal Interview.

In those factories, Kai and his friends only made around 2,400 yuan per month, and always worked late, till 11pm. Kai, of course, was not satisfied with the income, but did not mind. He said, “I went to the factory for fun, not for money. When I did not want to work, I called sick leaves. If I was short of money, my parents would give me some.”¹¹⁰ Kai was the only boy in his family, and had an older sister. He admitted that his parents spoiled him. Before graduation from middle school Kai never did any housework, let alone farm work.

When Kai broke up with his factory-girlfriend, he went back to his hometown, and started a serious relationship with a local girl, in 2008. His parents built a new two-floor-house for him. At that time, he also began working on construction sites: “I was forced to work on construction sites. Forced by whom? By reality! All the youth in our village go out to work in construction site. How can I not to? Frankly speaking, our family is in good financial situation in our village. But we have to work constantly to keep our current living standard.”¹¹¹ Kai married in 2011, and his first son was born in 2013. He said that he felt a lot of pressure after becoming a father, and realized he must take more responsibility. He had been working on construction sites with his parents, because his mother could “control money” for him. If he worked by himself, he spent too much, and did not save.

¹¹⁰ See *ibid.*

¹¹¹ See *ibid.*

Another obvious generational difference was respondents' attitudes toward their construction jobs. The interviewees born before 1985 seldom complained about the hardship and workload on construction sites. In general, they were satisfied with their jobs because payment was good. Their only concern was whether they could get paid on time, and the full amount. By contrast, the new generation had strong negative attitudes toward to this industry. Every interviewee born after 1985 told me that he could not get used to the hardship and workload on construction sites. Some of them told me that they cried when they started to work; "It is too exhausting! Too tiring!" they said. All respondents did not like working in the construction industry, and several even used a strong word "hate." For instance, Wei said some of the major reasons why he hated working in construction sites were that they were "too dirty, too exhausting, and bad living conditions."¹¹² Jie recounted a jingle written by a youth in his village, that migrant construction workers "eat pig's food, do horse's work, and live in dog's kennels."¹¹³ All respondents affirmed that they would leave this industry if they had other options. In their opinion, the "option" meant another job that was less exhausting, had better working and living conditions, and could make at least 5,000 yuan per month.

The older generation was fully aware of this difference. As Hongliang, born in 1965, told

¹¹² See Juan Li, (2015, February 5th), Personal Interview.

¹¹³ See Juan Li, (2014, December 28th), Personal Interview.

me,

We can endure the hardship in construction sites. It's ok. What we did in the past was even harder, and we were only paid a few cents per day at that time. Now we earn much more. It is ok to work hard as long as we can make more money. There is nothing to be complained about. But those youth cannot endure the hardship. They are all spoiled at home. Look at my son, Jie, he was even incapable of carrying a single bucket of water at home! He is the little king in our family, and we never let him do any housework or farm work at home. ¹¹⁴

Some participants support their sons' desire to work in other industries, such as auto repair or garment-making. Their sons, of course, make less money, and work less hard. However, more interviewees' sons were still working on construction sites. All participants agreed that if there were better opportunities, they did not want their children to be construction workers. Kai, the youngest father, with a son older than one, said explicitly, "I definitely will not let my son work on construction sites; definitely not!" ¹¹⁵

3.4.4 Beijing – Labour Contract is Compulsory

According to the primary data, labour contracts have become obligatory, and have been mandated by the Beijing government since 2013. Making copies of ID cards, signing labour contracts, and taking safety exams, were three fixed procedures that occur on the first day, after entering a "formal" construction site. Furthermore, the local Labour Bureau has been quite strict with these compulsory procedures in recent years. The

¹¹⁴ See Juan Li, (2014, December 28th), Personal Interview.

¹¹⁵ See Juan Li, (2015, January 18th), Personal Interview.

officials of the local Labour Bureau often conduct random inspections on construction sites. They ask migrant workers whether they have signed labour contracts. If the answer is no, the general contractors and developers are fined, and the project is suspended. Therefore, contractors and developers take these stipulations seriously.

As such, there are many advantages to working in Beijing, including higher chances being covered by labour contracts, lower chances of wage default, shorter working hours, and better working conditions. Normally in the Northeast, the migrant construction workers work from 3:30 AM to 8 PM, sometimes even longer. For instance, Kai explained his daily schedule in the Northeast: “We normally get up at 3am, and works till 8pm in the evening, sometime work until 11pm. Some barely take lunch break in order to save time and make more money, for example, my dad. My mom sends the food upstairs to him.”¹¹⁶ It is shocking to learn of these working hours. Everyone told me the same story, from the elders in their 60s, to young boys who were only 15, and had just graduated from middle school. It is also noticeable that migrant construction workers choose such long working hours voluntarily, because the more they work, the more they earn. Meanwhile, in Beijing, construction sites are strictly forbidden to operate before 6 AM and after 6 PM. Therefore, migrant construction workers in Beijing have much shorter working hours than those working in other areas, especially in the Northeast.

¹¹⁶ Juan Li, (2015, January 18th), Personal Interview.

The living conditions on construction sites in Beijing are also better than those in the Northeast. In Beijing, the government requires every construction site to build temporary lodging for workers. However, in the Northeast, workers often live in the uncompleted buildings on which they are working. There is no heating system, and sometimes there lack windows, doors, or walls. For instance, as Jie told me, “The winter in Changchun is damn cold, and long. In November, it is already damn cold. The walls are frozen. When we sleep, snow falls in our bed. When it snows heavily, we cannot go to work because the cement would not dry. So we have to stay in our shabby shelter, sitting in bed, covered by a quilt, play cards or read novels.”¹¹⁷ When learning of the extremely long working hours and the terrible working conditions in construction sites in China, it is easy to understand why the young generation migrant workers use the word, “hate,” to describe their feelings on construction jobs.

Despite the advantages of working in Beijing, most interviewees choose to work in the Northeast, instead. The reason speaks to the significant shortcoming of working in Beijing: less income. According to the primary data, as of 2014, an unskilled worker can typically make 180 yuan per day in Beijing, around 200 yuan per day in the Northeast, and 150-200 yuan a day in other cities. The income of plasterers varies more significantly, as they are paid by the number of square meters they plastered. Due to the longer working-hours in the Northeast, plasterers can earn much more than those working in

¹¹⁷ Juan Li, (2014, December 28th), Personal Interview.

Beijing. According to the primary data, as of 2014, the typical price for plastering work was around 8 yuan per square meter. A plasterer could normally make around 70-100 thousand yuan in Northeast for a whole year, while only 50-60 thousand yuan in Beijing. The income difference is significant.

It is notable that Hongliang is the only unskilled worker among interviewees. All of the other interviewees are plasterers, tilling master, or site managers. Hongliang used to be a plasterer, but he lost the first joint of his index finger on his right hand in a construction accident in 2012, and had not recovered well. He could no longer perform heavy plastering work, and could only work as an unskilled worker. Since the income difference of unskilled worker is not that significant in Northeast and Beijing, his family wanted him to work in Beijing where he could have shorter working hours and better living conditions. This is likely the main reason for why Hongliang chose to work in Beijing, rather than because of labour contracts.

3.4.5 Guangdong – Site Managers Covered by Labour Contracts

The two interviewees, Jinyun and Guohui, who signed labour contracts in Guangdong Province, are both site managers for different construction companies. In many ways, site managers differ from ordinary migrant workers, and play an important role in construction companies. They are in charge of everything on sites, including making the

budget, supervising projects progress, purchasing materials and supplies, dealing with records and bills, coordinating different parties, dealing with events and issues on sites, etc. They are considered formal employees of the company, while migrant workers are “informal” temporary workers hired by an outsourcer. Unlike migrant workers who get paid at the end of project, or Lunar Year, construction companies pay site managers on a monthly basis, as with other formal employees. Their wages are seldom defaulted upon. The construction companies in Guangdong not only signed labour contracts with site managers, but also provided social and medical insurance for site managers. It is also notable that both Guohui and Jinyun work for Guangdong bosses when they worked in Guangdong, rather than Xiaogan bosses. Different from other migrant workers, they did not rely on the job referrals from their co-villagers. As Jinyun said, “Once we work as site managers, we know many people in this circle. We stay in touch and refer jobs to each other all the time.”¹¹⁸

Both Jinyun and Guohui complained that companies in Hubei are much more “informal” than those in Guangdong. When the interviews were conducted, both respondents were working in Hubei because of family issues, and were working for different construction companies in Suizhou, a city near to Xiaogan. They were still working as site managers, and still got paid monthly. However, the construction companies in Suizhou did not sign labour contracts with them, let alone provide any insurance. That said, Guohui and

¹¹⁸ Juan Li, (2015, January 20th), Personal Interview.

Jinyun's experiences of signing labour contracts in Guangdong does not indicate that migrant construction workers in Guangdong have higher chances of signing labour contracts than those working in other areas. None of the interviewees who worked as construction workers told me they had been covered by labour contracts in Guangdong. For instance, Chutian, born in 1953, worked as a water and electricity mechanic for a construction company in Guangzhou for a few years. Chutian never signed a labour contract with this company, and was never covered by any social or medical insurance. Therefore, Guohui and Jinyun's experiences indicate that site managers in Guangdong have higher chances of being covered by a labour contract and social insurance than do site managers working in other areas.

3.4.6 Northeast – Odd Work, No Labour Contracts

The remaining 28 interviewees had never signed a labour contract. Most of them primarily work in the Northeast of China. Thanks to the Revitalize Northeast Campaign in China, there have been more construction projects in the Northeast, and more job opportunities for Xiaogan plasterers. Compared with other areas, there are more construction odd jobs in the Northeast – this is referred to as “working as a rabbit” (da tuzi¹¹⁹), which means workers undertake odd jobs on construction sites and get paid daily. “Rabbits” can earn more than regular plasterers; normally, a plasterer can make around

¹¹⁹ 打兔子。

400-450 yuan per day in the Northeast, but a “rabbit” can earn more than 500 yuan per day. In fact, when there is a tight deadline, a “rabbit’s” salary could reach 1000 yuan per day. Moreover, the “rabbits” are paid in cash, every evening. Compared to traditional long-term payment schedules in this industry, such odd jobs are obviously attractive.

Young migrant workers prefer odd jobs, which have higher income but less stability. Different from their fathers who tended to stay with one boss for an entire project, or even year, the rural youth seldom stay on one site for a long time. They switch jobs frequently. In order to collect and distribute information of odd jobs, there emerges a new position, “head of rabbits” (tuzi tou¹²⁰), who is in charge of looking for odd job opportunities, and referring those to “rabbits.” The “head of rabbits” charge 10 to 20 yuan per day from each “rabbit” for the information.

It is also worth noting that rural youth are slightly less loyal to the autonomous system built by Xiaogan people in the construction industry. Since roughly 2013, rural youth have increasingly worked for “outsiders,” as long as payment is on a daily basis. However, these young men also rely on their autonomous system to find odd job opportunities, and to evaluate bosses’ reputation. As Peng said, “We check with our friends and relatives to find out whether they are reliable on payment.”¹²¹ Jie felt

¹²⁰ 兔子头。

¹²¹ Juan Li, (2015, January 21st), Personal Interview.

similarly, explaining that, “Normally we don’t work for outsiders, unless the boss is referred by our good friends or relatives, someone we trust.”¹²²

Compared with traditional jobs requiring one to live on the construction site, odd jobs earn more, but also cost more. The “rabbits” need to pay for their accommodation and travel fees, as well as necessities. Wei, a shy boy born in 1990, explained the situation in detail,

In the Northeast, I live in small inns. It costs around 20 to 30 yuan for one night. The hotel provides quilts, but I would like buy new ones. I don’t take a quilt with me. You know, I need to bring my own tools, and don’t want to carry a huge package. Once, I went to Wuhan, with a big quilt. When I got on a bus, the bus driver shouted at me, “Go to the back! So dirty! Dirty!” People on the bus all stared at me. I was too embarrassed! From then on, I never bring a quilt with me. Every time when I go to a new place, I buy a new one.”¹²³

In contrast, migrant workers who live on construction sites do not need to pay these fees and costs, as subcontractors take care of everything. Hence, some older interviewees challenged the notion that “rabbits” could earn more than those living on sites, due to the high costs and unstable job opportunities.

Yan’s study of “The Individualization of Chinese Society” provides valuable insight on this generation differences among the migrant construction workers. Yan explores that

¹²² Juan Li, (2014, December 28th), Personal Interview.

¹²³ Juan Li, (2015, February 5th), Personal Interview.

two of the most profound changes in the Chinese society since the economic reform are the rise of the individual in both public and private spheres and the consequent individualization of Chinese society itself. Yan argues that the individuals in China are more influenced by “modern social institutions” than by family considerations. In the context of market economy and globalization, Chinese people have to pay more attention to individuality and self-reliance.¹²⁴ This theory of “rise of individual” can help to explain the different attitudes toward certain traditional Chinese values between the two generations.

3.4.7 More Job Opportunities

Nearly all interviewees confirmed that it was much easier to find jobs since the end of 2000s. For instance, as Kai explained, “It is so easy for a plasterer to find a job nowadays! You just need to walk into a construction site casually. Bang! You got a job!”¹²⁵ It was different in the 1990s and 2000s, when bosses chose workers. At that time, migrant workers needed to have ‘guanxi’ to find jobs. They had to visit bosses’ houses with gifts and kind words. Now, these positions have reversed. Migrant workers can choose bosses, especially skilled masters. During spring festival, bosses visit the masters’ houses with expensive gifts and compliments. Sometimes, bosses even pay masters 10,000 -20,000

¹²⁴ Yan, Yunxiang. *The Individualization of Chinese Society*. (English ed.) New York; Oxford, UK;: Berg, 2009.

¹²⁵ Juan Li, (2015, January 21st), Personal Interview.

yuan in advance, in order to get a promise of work. As with every boss in the construction industry, it is important to have a stable team. This is often referred to as a “family team” (jia banzi¹²⁶) in Xiaogan area, and refers to a stable and fixed team, where members are relatives or good friends who would not leave the boss under any circumstance. Family teams provide strong support for the Xiaogan bosses. Therefore, the bosses try hard to attract good workers into their family teams.

3.4.8 Unwritten Contract – “We Had a Deal”

During my fieldwork, I often heard the phrase: “We had a deal.”¹²⁷ Although written labour contracts are still rarely seen in the Chinese construction industry, migrant construction workers from Xiaogan rely on their autonomous system to protect their interests. This autonomous system based on family ethic, as well as the oral “deal” between members, is astonishingly powerful, and more efficient than current labour contracts. Both parties take the “deal” seriously, and try to fulfill their liabilities. Workers work hard, and wait for their wages at the end of lunar year, while bosses take care of all costs and expenses, and try their best to pay workers in full, by the end of lunar year. It is normal that Xiaogan bosses pay workers’ wages, even if the contractors or subcontractors have not paid them. Sometimes, they even take the risk of borrowing at usurious interest rates to pay workers. For instance, as Hongxing explained, “As the old saying goes ‘Man

¹²⁶ 家班子

¹²⁷ Their original words were: “Women shuo hao le de (我们说好了的).”

cannot live without face as a tree cannot live without bark.’ People in rural areas take their reputation very seriously. Money is only a number in your bank card. Reputation is much more important than money.”¹²⁸ When a boss cannot pay wages by every means, he may choose to disappear, and never return to his hometown. As rural residents, who care about clan and family relationships, the cost and shame is too high.

Among all of the interviewees, there were two “little bosses,” Zhiliang and Hongxing. Their experiences are representative of subcontractors’ opinions and attitudes in this multi-tier subcontracting system. Zhiliang used to be a truck driver carrying stone material, and became a “little boss” in 2012. He subcontracted a few projects, and made around 100,000 yuan in 2014. Zhiliang has formed a bond with several workers, but they do not have a fixed employment relationship. Zhiliang calls the workers if he subcontracts a project, and the workers come if they are available at that time. The salary is based on how many days they work for him, or how many square meters they plaster. When asked what happens if he subcontracts a project but cannot find enough workers, Zhiliang responded, “I never worry about this, because I never default any worker’s wages. I have a good reputation. Even if the big boss does not pay me, I would pay off workers using my own money. So many workers are willing to work with me. We had a deal. I have to be responsible for their payment.”¹²⁹ It is noticeable that both Zhiliang and

¹²⁸ Juan Li, (2015, February 5th), Personal Interview.

¹²⁹ Juan Li, (2015, January 9th), Personal Interview.

Hongxing, the two labour subcontractors, believe that it is their responsibility to pay off the workers, no matter whether the big bosses pay them or not.

Hongxing, born in 1971, one of the three interviewees who went to high school, has been a site manager for more than 20 years, and planned to be a “little boss” in 2015. Different from other interviewees, Hongxing had a very clear plan for his future, and had been working hard in order to achieve his goals. He established a good relationship with those managers in the general contracting companies, he studies drawings, and calculated costs and benefits of every project in which he was involved. As he explained, “I need to know everything. As Napoleon said, ‘A soldier who does not want to be a general is not a good soldier’, right?”¹³⁰ Hongxing has also prepared his own “family team” over the past five years. He brought more than ten workers to his sites every year, and took responsibility for their costs, accommodations, and wages. As he explained, “These people came for me, and we had a deal. I must take care of everything for them on sites.”¹³¹

My discussion with Hongxing revealed the process by which this system comes together:

Now my boss is waiting for the money in Xi’an. When he gets the money, he will transfer my part to my card, including my workers’ wages and mine. Then I’ll call my workers one by one. ‘Hi buddy, I’ll bring cash to your house this afternoon.’ When I arrive, every family member is waiting for me. They prepare the best food and wine, no matter what time it is. They would put a pack of good cigarette in my pocket, and keep saying nice words to me. I also say nice words to

¹³⁰ Juan Li, (2015, February 5th), Personal Interview.

¹³¹ *Ibid.*

appreciate their hard work for the whole year. We talk and drink very happily together. That is the best moment of the whole year! I feel so proud of myself!¹³²

Hongxing's story is really inspirational, especially after hearing so many disappointing and frustrating stories happened in big cities, such as young boys climbing up to a high tower threatening to commit a suicide, old men in their 60s waited for their wages in heavy snow days after nights, migrant workers were driven out of their dormitories because they refused to leave without wages, etc. Hongxing's story was really "the best moment of the whole year."¹³³

3.5 Summary

Based on the primary data, this chapter explores migrant construction workers' legal culture with respect to labour contracts and Labour Contract Law in China. Different from much of the literature on the enforcement of Labour Contract Law, this chapter notes that in the construction industry, the implementation of Labour Contract Law is far from satisfying. The rate of migrant workers covered by labour contracts in construction industry is extremely low. Among the 34 interviewees, there were only six who had signed valid labour contracts, and five of those six signed contracts only once. The only respondent who signed labour contracts more than once did so all in Beijing and all in

¹³² *Ibid.*

¹³³ *Ibid.*

2014. Considering the large number of construction projects in which every interviewee has participated, the rate of migrant workers covered by labour contracts in this industry is appallingly low.

One's host city is the most influential factor that affects the chances of being covered by a labour contract. In Beijing, migrant workers have a much greater chance of being covered by a labour contract than in other cities, especially since 2013. The primary concern of the Beijing government is to maintain social stability, and local authorities try any means to mitigate mass unrest, such as labour protests. As such, the Beijing government pays great attention to the implementation of labour regulations. This is the main reason why migrant workers have higher chances of being covered by labour contracts in Beijing.

In addition to host cities, one's position also matters. For instance, site managers in Guangdong province have a greater possibility of being covered by labour contracts, as well as receiving social and medical insurance. However, there is no evidence that ordinary migrant workers have such chances in Guangdong. Most migrant construction workers from Xiaogan chose to work in Northeast of China, with no labour contract, but with a higher income. There are also greater chances of doing odd jobs and getting paid in cash every day in the Northeast China. Hence, although migrant workers know that they have higher chances of signing labour contracts in Beijing, most still choose to work in the Northeast.

Because of the small sample size, it is hard to draw a solid conclusion whether education is associated with perceptions of better enforcement of labour regulations. Only one out of three respondents who went to high school had previously signed a labour contract. According to the quantitative data, there is no evidence that migrant workers with higher educational achievement have higher chances of being covered by labour contracts. However, quality data can provide some interesting findings. Two out of the three high school graduates were working as site managers, who are above normal labour workers. They have more power to protect themselves, and seldom worry about wage default.

Age is also an unimportant factor with respect to the enforcement of Labour Contract Law. There is no evidence that the younger generation is better covered by labour contracts. The most obvious difference between the two generations is that the older generation regards construction work as a good job, and can handle the heavy labour, while the younger generation dislikes this work because it is too exhausting; they would leave if they had other options. Unfortunately, it is not easy for them to find other options. All of the interviewees born after 1980 only went to middle school. It is hard for them to find another job at which they make as good money as they can as plasterers. Moreover, this job gives them more freedom. Essentially, they are their own bosses. They can work or rest on their own schedule, and choose their bosses freely. Therefore, although most of my interviewees have tried other jobs, all of them came back to the construction industry.

The second difference between the two generations is that the younger generation has a slightly more open attitude toward working for “outsider” bosses, as long as the payment terms are good: higher salary and payment in cash, on a daily basis. Even when the younger generation chooses to work for “outsiders,” they still rely on their co-villagers’ referrals. The older generation seldom tries this, and tends to stick to the unwritten principle in their hometown, only working for co-villagers.

Apart from one family, all interviewees thought that labour contracts were unnecessary and unimportant. Even those who had signed labour contracts felt this way. They did not read the content, did not keep it, and did not seem to care. Some of them even thought that labour contracts were restrictive for workers, rather than protective.

Although written labour contracts remain rare in the construction industry, the primary data clearly indicates that migrant construction workers have used traditional methods to develop an autonomous system, amidst the industry’s chaos, in order to protect their interests. This autonomous system is not only efficient, but also powerful. The ideological rationale behind it is based on a traditional Chinese adhesive, the family ethic. The oral “deal” between two acquaintances in rural China is more effective and efficient than written labour contracts between employers and employees. It provides the most convenience, reduces costs, and maximizes profits for both parties. Thus, based on

rational and practical decisions, Xiaogan migrant workers tend to rely on this traditional system, rather than the formal legal system.

Chapter 4 Labour Disputes

4.1 Introduction

Over the past three decades, China has sought fast economic growth under authoritarian control, and curbing labour power is one of the most important strategies to appease business interest.¹ The economic reform has ended harmonious employment relations, as a result, Chinese workers have become more vulnerable and marginalized than at any time since 1949.² Labour disputes have been on a sharp rise, and industrial conflicts have become more violent and collective.³ Some scholars even call China “an emerging epicenter of world labour unrest,”⁴ or “undeniably the epicenter of global labour unrest.”⁵ The surge in labour disputes is considered by the regime in China as the “biggest threat to social stability” and its own rule.⁶

¹ Feng Chen, “Between the State and Labour: the Conflict of Chinese Trade Unions’ Double Identity in Market Reform,” *The China Quarterly* 176 (2005): 1006; Gordon White, “Chinese Trade Unions in the Transition from Socialism: towards Corporatism or Civil Society?” *British Journal of Industrial Relations* 34:3 (1996): 433.

² Ching Kwan Lee, *Against the Law: Labour Protests in China’s Rustbelt and Sunbelt* (University of California Press, 2007); Ching Kwan Lee and Yonghong Zhang, “The Power of Instability: The Microfoundations of Bargained Authoritarianism in China,” *American Journal of Sociology* 118:6 (2013): 1475.

³ Jenny Chan and Mark Selden. *China’s Rural Migrant Workers, the State, and Labour Politics*. *Critical Asian Studies* 46 (4) (2014): 599; Jie Shen, *Labour Disputes and Their Resolution in China* (Oxford: Chandos, 2007), 1; Lee, *Against the Law*, *supra* n. 2.

⁴ *Ibid*; Beverly J. Silver and Lu Zhang, “China as an Emerging Epicenter of World Labour Unrest,” in *China and Transformation of Global Capitalism*, ed. Ho-Fung Huang (New York: RoutledgeCurzon, 2004), 50.

⁵ Eli Friedman, “China in Revolt,” *Jacobin*, 7/8, January 29th, 2014, accessed October 12, 2015, <http://jacobinmag.com/2012/08/china-in-revolt/>.

⁶ Shen, *supra* n. 3, 2; Thomas F. Remington and Xiaowen Cui, “The Impact of the 2008 Labour Contract Law on Labour Disputes in China,” *Journal of East Asian Studies* 15 (2015): 271.

In 2008, three important labour laws – Labour Contract Law,⁷ Labour Dispute Mediation and Arbitration Law,⁸ and Promoting Labour Employment Law,⁹ – were enacted within one year, which had significant impacts on labour relations and Chinese society.¹⁰ To date, some studies have investigated whether the new labour laws have provided more protections for workers in labour disputes. However, there remains a lack of empirical study that explores the ideas, opinions, and attitudes of workers, especially migrant workers, with regard to labour disputes and related legal system. What do they think about their labour disputes? What are the main causes and nature of their disputes? How do they resolve their disputes? What are the main factors that have influenced their legal culture with regard to labour disputes? This study chooses the construction industry as an example, and attempts to explore the above questions based on primary data collected from interviews with 34 migrant construction workers, who are all originally residents of Shuangfeng Town, a typical rural area in central part of China.

4.2 Background

A great deal of literature has focused on the sharp rise of labour disputes and protests in

⁷ Labour Contract Law of PRC, http://www.npc.gov.cn/wxzl/gongbao/2013-04/15/content_1811058.htm.

⁸ Labour Dispute Mediation and Arbitration Law of PRC, http://www.gov.cn/flfg/2007-12/29/content_847310.htm.

⁹ Promoting Labour Employment Law of PRC, http://www.gov.cn/flfg/2007-08/31/content_732597.htm.

¹⁰ Ronald C. Brown, *Understanding Labour and Employment Law in China* (Cambridge: Cambridge University Press, 2010), 44.

China, ever since the mass retrenchment in SOEs in 1980s. Many studies focus on the nature and causes of labour disputes in China, while others explore the resolution system of labour disputes, including formal and informal ones.

4.2.1 Sharp Rise of Labour Disputes and Protests in China

Since the mass retrenchment in SOEs by the end of the 1980s, labour disputes have increased dramatically in China. Some literature explores that the increase coincides with the end of the era of surplus labour. Some literature highlights that that disputes result from a better rights awareness of the workers.¹¹ Based on an investigation undertaken by the Ministry of Labour and Social Security (MOLSS) of 31 provinces, autonomous regions, and municipal cities in 2005, there were 744,000 labourers registered for labour arbitration, and 19,000 collective labour disputes, involving 410,000 labourers. Besides, labour arbitration committees also settled 94,000 nonregistered labour disputes. This means that there were 860 labour disputes every day, representing an increase of 20.5 percent compared with 2004.¹² A national survey conducted by the ACFTU in 2007 found that roughly 12 percent of surveyed workers had been involved in a labour dispute.¹³ Collective labour disputes grew at a rate of 11 percent per year between 2001

¹¹ OECD Library. *Labour Market Changes, Labour Disputes and Social Cohesion in China*. 2012.

¹² Ministry of Labour and Social Security (MOLSS), "Labour Dispute Resolution in 2005," accessed April 19 2015, http://www.molss.gov.cn/gb/ywzn/2006-06/08/content_119054.htm.

¹³ Mingwei Liu, "Conflict Resolution in China," in *The Oxford Handbook of Conflict Management in Organizations*, eds. William K. Roche, Paul Teague, and Alexander J. S. Colvin (Oxford: Oxford University Press, 2014), 488.

and 2008.¹⁴

There also has been a dramatic increase in labour unrest. Since the right to strike was removed from the Chinese Constitution in 1982, the legality of striking remains vague.¹⁵ Hence, the accurate statistics on strikes and protests are unavailable. Popular unrest of all types, including labour issues, land struggles, environmental disputes, and so forth, has risen steadily over the past two decades. The regime uses the term of “mass incidents” for all these collective actions. Such “mass incidents” jumped from 9,000 separate incidents in 1994, to 87,000 in 2005.¹⁶ The Ministry of Public Security recorded 8,700 “mass incidents” in 1993, rising to 32,000 in 1999,¹⁷ to 74,000 in 2004, and 87,000 in 2005.¹⁸ The last time the government released figures, there had been 127,000 “mass incidents” in 2008.¹⁹ According to academic statistics, around 36 percent of “mass incidents” are about labour issues.²⁰

¹⁴ Wang Jing, “Collective Consultation and Labour’s Collective Rights in China,” ILERA 16th World Congress, 2012.

¹⁵ Taylor Bill, Kai Chang and Qin Li, *Industrial Relations in China* (Northampton, MA: Edward Elgar Publishing, 2003).

¹⁶ Murray Scot. Tanner, “China Rethinks Unrest,” *Washington Quarterly* 27.3 (2004): 137.

¹⁷ Minxin Pei, “Rights and Resistance: the changing contexts of the dissident movement,” in Elizabeth J. Perry and Mark Selden, *Chinese Society: Change, Conflict, and Resistance* (New York: Routledge, 2003), 29.

¹⁸ Howard French, “Land of 74,000 Protests (but little is ever fixed),” *New York Times*, August 24, 2005; Joseph Kahn, “Pace and scope of protests in China accelerated in ‘05’,” *New York Times*, January 20, 2005.

¹⁹ Andrew Wedeman, “Enemies of the State: Mass Incidents and Subversion in China,” APSA 2009 Toronto Meeting Paper, January 29, 2014, accessed September 16th, 2015, <http://papers.ssrn.com/Sol3/papers.cfm?abstractid=1451828>.

²⁰ *Ibid*; also see Feng Chen, “Trade Unions and the Quadripartite Interactions in Strike Settlement in China,” *China Quarterly* 201 (2010): 104.

So far, there is no concrete evidence proving that labour disputes and protests have reduced since the new labour regulations were enacted in 2008; on the contrary, there are signs that those numbers are still rising. According to a report of *South China Morning Post*, the number of strikes from January to April 2014 is up by nearly a third, over the same period in 2013. From May to June of 2010, Chinese and international media reported at least 9 separate strikes at various enterprises, mostly foreign-owned, that garnered attention in China and around the world.²¹ These episodes of labour unrest are emerging at the same time that businesses are cutting costs, and foreign companies are relocating, or closing operations.²²

Even these dramatic figures still do not reflect the entire picture of increasing labour disputes in China. Shen underscores that there is no statistical evidence reporting the full extent of labour dispute cases in China due to the complexity of labour disputes and their resolution mechanisms; therefore, official statistical reports only indicate part of the story, as these are only labour disputes registered for arbitration.²³ The primary data of this study also shows that although most interviewees have experienced labour disputes, few

²¹ Congressional Executive Commission on China, Report on worker actions in China, “Recent Worker Actions in China,” July 2, 2010, accessed March 28, 2015,

<http://www.cecc.gov/pages/virtualAcad/index.phpd?showsingle=142008>.

²² South China Morning Post, “Labour Disputes in China Increase as the Workforce Shrinks,” published on Friday, April 18, 2014, accessed September 16, 2015,

<http://www.scmp.com/news/china/Clauseicle/1486398/labour-disputes-china-increase-workforce-shrinks>.

²³ Shen, *supra* n. 2, 47.

attempted to resolve their disputes through a formal legal resolution system. Instead, most resolve disputes by informal and traditional means. A large amount of labour disputes that interviewees have experienced have not been registered into any formal or informal statistics. There is also a massive increase in the use of the formal dispute resolution mechanisms from 2008. This may indicate an increased willingness to use the reformed legal system.²⁴

4.2.2 The Main Causes of Labour Disputes

In China, labour disputes involve almost all aspects of employment relations, such as unpaid and defaulted wages, social and unemployment insurance and welfare, dismissals resulting from modification and termination of labour contracts, as well as a lack of production, protection, and training.²⁵ As stated by Wang Guanyun, Director of Guangdong Labour and Employment Service and Administrative Centre, “There are several causes of worker disputes, but the leading reason is when enterprises don’t pay salaries.”²⁶ In fact, the problem of wage arrears is so serious and common in labour-intensive factories, and an article argues that it has become a “custom” in

²⁴ Ronald C. Brown, “Defusion of Labour Disputes in China: Collective Negotiations, Mediation, Arbitration, and the Courts.” *China-EU Law Journal* 3 (2014).

²⁵ National Bureau of Statistics of China, *The Labour Statistical China Labour Statistical Yearbooks (ZhongGuo Laodong Tongji Nianjian)* (Beijing: China Statistics Press, 1995-2005), in Shen, *supra* n. 3.

²⁶ China Labour Watch, “Poor Working Conditions Plague Guangdong,” accessed March 19, 2015, <http://www.chinalabourwatch.org/en/web/Clauseicle>.

Guangdong,²⁷ while another article describes it as an “incurable disease.”²⁸ Some experts believe that it is necessary to criminalize wage default.²⁹ Lee argues that if getting paid for one’s labour is a fundamental feature of capitalist employment relations, strictly speaking many Chinese workers are not labourers yet.³⁰

Registered labour disputes concerning job loss are far less frequent than those concerning unpaid wages; however, this problem is no less serious. Lee’s observations on laid-off workers’ protest in the Northeast can help to explain this. According to Lee, in the Northeast, mass protests of laid-off workers’ are “protests of desperation.” They often choose to take their grievances to the street, leveraging political bargaining by shaming local officials and disrupting traffic. Seldom do they file arbitration or engage in litigation.³¹ Hence, it is safe to assume that the registered job losses are far less than the actual amounts. According to another study, less educated workers tend to take their grievances to the Visits and Letters Offices, local People’s Congresses, or Party organizations. At the same time, more educated and skilled employees often take their cases to legal arbitration.³² Therefore, the registered amount of labour disputes about job losing is far less than the amount actually happened.

²⁷ Workers Daily, May 9 2001.

²⁸ China Labour Security News, February 19 2002.

²⁹ China Daily, “Laws needed to ensure migrant workers’ wages,” *China Daily*, Mar. 9, 2006, accessed June 6, 2015, <http://www.china.org.cn/english/null/160892.htm>.

³⁰ Lee, *supra* n. 2.

³¹ *Ibid.*

³² Isabelle Thireau and Hua Linshan, “The Moral Universe of Aggrieved Chinese Workers: Workers’ Appeals to Arbitration Committees and Letters and Visits Offices,” *The China Journal* 50 (July 2003): 83.

4.2.3 *The Nature of Labour Disputes*

A large body of literature draws attention to the nature of labour disputes in China. Some studies characterize Chinese strikes and protests as being “reactive” or “defensive.” This is especially true for laid-off workers in SOEs who were dramatically restructured in the late 1990s and early 2000s.³³ In 1978, SOEs accounted for 80 percent of urban employment, while this figure declined to less than 30 percent by 2005.³⁴ In 1997 alone, SOEs lost about 13 million jobs, and 39 percent of urban households’ income dropped.³⁵ China workers were promised lifetime employment, but fell “from master to mendicant.”³⁶ Chen argues that this “subsistence crises,” corruption, and a sense of betrayal at the dissolution of the Mao-era socialism drove SOE employees into the streets, for these “protests of desperation.”³⁷

Different from the laid-off workers of SOEs, migrant workers were never given any

³³ Mary E. Gallagher, *Contagious Capitalism: Globalization and the Politics of Labour in China*. (Princeton: Princeton University Press, 2005).

³⁴ Albert Park and Fang Cai, “The Information of the Chinese Labour Market,” in *From Iron Rice Bowl to Informalization: Markets, Workers, and the State in a Changing China*, eds. Sarosh Kuruvilla, Ching Kwan Lee, and Mary E. Gallagher (Ithaca: Cornell University Press/ILR Press, 2011), 17-35.

³⁵ John Hassard, Jackie Sheehan, Meixiang Zhou, Jane Terpstra-Tong, and Morris Jonathan, *China’s State Enterprise Reform: From Marx to the Market* (New York: Routledge, 2007), 86-87, 157.

³⁶ Dorothy Solinger, “The New Crowd of the Dispossessed: The Shift of the Urban Proletariat from Master to Mendicant,” in *State and Society in 21 Century China: Crisis, Contention and Legitimizing*, eds. Peter Hays Cries and Stanley Rosen (New York: Routledge Curzon, 2004), 50-66.

³⁷ Lee, *supra* n. 2.

promises, but rather suffered from “institutional discrimination.”³⁸ They are particularly vulnerable to abuse,³⁹ and are the main victims of serious labour-rights violations.⁴⁰ Although migrant workers resort to wildcat strikes, they adopt legal procedures more often than SOE workers.⁴¹ Elfstrom and Kuruvilla highlight that the protests of migrants are also reactive, as a demand that the minimums of an existing system be upheld.⁴² Lee explores the nature of labour protests by migrant workers in the Southeast as “protests against discrimination.”⁴³

The nature of labour disputes in China also varies by region, by different managerial regimes, and by their own networks and connections.⁴⁴ Su and He highlight that local authorities always maintain a close relationship with employers, and often take their side in labour disputes in many regions in China.⁴⁵ Cooke notes that labour disputes are excessively high in foreign-invested enterprises.⁴⁶ Lee and Sargeson state that workers

³⁸ *Ibid*

³⁹ Shen, *supra* n. 3, 13-16, 25-18

⁴⁰ Anita Chan, *China's Workers under Assault: the Exploitation of Labour in a Globalizing Economy* (Armonk, N.Y.: M.E. Sharpe, 2001).

⁴¹ Jenny Chan, “Chinese Women Workers Organize in the Export Zones,” *New Labour Forum* 15.1 (2006): 19; Aaron Halegua, “Getting Paid: Processing the Labour Disputes of China’s Migrant Workers,” *Berkeley Journal of International Law* 26.1 (2008): 254; Eli Friedman and Ching Kwan Lee, “Remaking the World of Chinese Labour: A 30-Year Retrospective,” *British journal of Industrial Relations* 48.3 (2008): 507.

⁴² Manfred Elfstrom and Sarosh Kuruvilla, “The Changing Nature of Labour Unrest in China,” *ILR Review* (April 2014): 453.

⁴³ Lee, *supra* n. 2.

⁴⁴ Elizabeth J. Perry, *Challenging the Mandate of Heaven: Social Protest and State Power in China*, (Armonk, NY: M. E. Sharpe, 2002).

⁴⁵ Yang Su and Xin He, “Street as Courtroom: State Accommodation of Social Protest in China,” *Law and Society Review* 44.1 (2010): 157.

⁴⁶ Fang Lee Cooke, “The Changing Dynamics of Employment Relations in China: An Evaluation of the

are normally divided by recruitment networks based on hometown ties.⁴⁷ Pun and Smith explain that workers are divided by dormitory regimes, which put them out of reach of “geographically rooted norms” and “localized practices.”⁴⁸

Chen argues that in labour protests in China workers are essentially spontaneous and leaderless, characterized by narrow and enterprise-specific claims. He highlights that such protests come and go, and can hardly establish an organizational basis for the pursuit of workers’ long-term interests.⁴⁹ Lee also highlights that the main features of Chinese workers’ protests are decentralization and cellular activism.⁵⁰ Elfstrom and Kuruvilla contend that Chinese workers have been striking offensively for more money, better working conditions, and more respect from employers since 2008. They believe that the Chinese workers have more power as a result of economic and political opportunities, including a growing labour shortage, new labour laws, and new media openness.⁵¹

Rising Level of Labour Disputes,” *Journal of Industrial Relations* 50(1) (2008): 111.

⁴⁷ Ching Kwan Lee, *Gender and the South China Miracle- Two Worlds of Factory Women* (Berkeley: University of California Press, 1998); Sally Sargeson, *Reworking China’s Proletariat* (New York: St. MClausein’s, 1999).

⁴⁸ Ngai Pun and Chris Smith, “Putting Transnational Labour Process in Its Place: The Dormitory Labour Regime in Post-Socialist China,” *Work, Employment and Society* 21.1 (2007): 27.

⁴⁹ Feng Chen, “Subsistence Crises, Managerial Corruption and Labour Protests in China,” *The China Journal* 44 (2000): 41.

⁵⁰ Lee, *supra* n. 2.

⁵¹ Elfstrom and Kuruvilla, *supra* n. 42.

4.2.4 Organized Strikes and Growing Labour Shortage

The strikes in recent years suggest a shift in the nature of labour protest in China. For instance, from May 17th to June 6th 2010, 1,910 workers for the Honda Company, in the Foshan branch, engaged in a 21-days strike, asking for a wage increase, better working conditions, and a more representative union. This strike ended with a 24 percent of wage increase and some improvements to working conditions. During this process, managers and the local trade union threatened to fire the strike leaders, hire new workers, offered several plans of salary increase, and asked for help from the local authorities. None of these tactics worked. Workers did not give up until they were satisfied with the negotiation result.⁵² The most striking feature of the Honda strike is that it was an organized collective action, which indicates an awakening of class consciousness among the Chinese working class.⁵³ Most of the 1,910 workers are so-called “post-80s” or “post-90s.” They used cell phone messages and a QQ group to communicate and organize the strike.⁵⁴ The possibilities of information technology, the Internet, and mass media are eye-openers for the new generation.⁵⁵ It is easier for them to obtain information from outside world, which is very different from past situation, where older generation migrant

⁵² Chinahrd Net, “Our Workers are Powerful: a Review at Honda Strike,” accessed on April 28, 2015, <http://www2.chinahrd.net/Authorcolumn/subject.aspx?typeid=newsandid=6562dd15-1a28-4795-a1a9-ecff0b7b4bea>.

⁵³ Jieping Zhang and Yixin Zhu, “Labour Movement in China Requires Independent Trade Unions,” *Asia Week* 24.23 (2010), accessed September 26, 2015, <http://gb.udn.com/gb/blog.udn.com/yensunny/4125202>.

⁵⁴ Finance, “Deep Analyze the Strike in Honda Foshan Branch,” June 1st, 2010, accessed September 26, 2015, <http://finance.591hx.com/Clauseicle/2010-06-01/0000057894s.shtml>.

⁵⁵ Zhang and Zhu, *supra* n. 53.

workers were isolated in factories, and barely had connection to the outside.⁵⁶ What is more important, the Honda strike in Foshan did not simply come and go; on the contrary, it directly led to an additional two strikes in other Honda branches. Moreover, it suddenly and unexpectedly turned into a symbol of this nation's struggle with income inequality, rising inflation, and soaring property prices.⁵⁷ More recently, in January 2012, more than 2,000 workers at the state-owned Pangang Group Chengdu Steel and Vanadium Company struck, demanding a raise, more stable contracts, and the dismissal of "lazy, redundant personnel" (managers).⁵⁸ As stated by foreign observers, "After years of being pushed to work 12-hour days, six days a week on monotonous low-wage assembly line tasks, China's workers are starting to push back."⁵⁹

Besides these aggressive labour protests, increasing numbers of Chinese workers adopt the milder strategy to "push back," voting with their feet. The Pearl River Delta region, where most of the labour-intensive manufacturing industries are located, started to experience migrant labour shortage by the early of 2000s.⁶⁰ The labour shortage

⁵⁶ Chan, *supra* n. 40; Liren Shen, *Chinese Migrant Workers (Zhongguo Nongmingong)* (Beijing, Democracy & Construction Press, 2005).

⁵⁷ Congressional Executive Commission on China, *supra* n. 20.

⁵⁸ China Labour Watch, *Chengdu Steel Factory Workers Strike for More Pay*, May 10 2012, accessed October 12, 2015, <http://www.chinalabourwatch.org/news/new-410.html>.

⁵⁹ Congressional Executive Commission on China, *supra* n. 20.

⁶⁰ David Barboza, "Labour Shortage in China May Lead to Trade Shift," *New York Times*, April 3 2006, accessed September 26, 2015, <http://www.nytimes.com/2006/04/03/business/03labor.html?pagewanted=all>.

continued, and spread to other areas in later years, although enterprises raised wages.⁶¹ Much literature explores the reasons for labour shortage in China. Bai asserts that the shortage is not a real shortage, but a shortage of “young, female, and skilled migrant workers.” Many elder, male, and unskilled workers cannot find jobs.⁶² Liu believes that the labour shortage was caused by increasing rural residents’ income, from strong economic growth, and favourable government policies on agriculture. He also argues that new generation migrant workers are better educated and more modern-thinking than their parents, and are less tolerant of harsh working conditions and low pay.⁶³ Chan believes that the labour shortage is because migrant workers find that working in cities is unpleasant, and thus choose to stay in rural areas.⁶⁴ Wang also suggests that since the 2010s, increasing rural workers have chosen to stay closer to their hometowns.⁶⁵

The growing labour shortage is often considered a main cause of increasing labour disputes in recent years. Clarke and Pringle argue that workers’ capacity to strike has

⁶¹ Olivia Chung, “China Labour Shortage Spreads,” *Asia Times Online*, October 22, 2011, accessed September 26, 2015, <http://www.atimes.com/atimes/ChinaBusiness/MA29CbO1.html>.

⁶² Nansheng Bai and Hongyuan Song. *Return, or stay in cities? Research on Chinese migrant workers’ returning to rural areas (Huixiang, haishi jincheng? Zhongguo nongcun waichu laodongli huiliu yanjiu)* (Beijing: China Finance Economic Press, 2002).

⁶³ Liu Shinan, “All Hail China’s New Job-Seekers,” *China Daily*, February 27, 2008, accessed September 24, 2015, http://news.xinhuanet.com/english/2008-02/27/content_7676883.htm.

⁶⁴ Anita Chan, “Labour Standards and Human Rights: the Case of Chinese Workers under Market Socialism,” *Human Rights Quarterly* 20.4 (1998): 886.

⁶⁵ Zhuoqiong Wang, “More Workers Staying near Home,” *China Daily*, May 2, 2012, accessed October 10, 2015, <http://www.chinadaily.com.cn/china/2012-04/28/content15166329.htm>.

been significantly increased as labour shortages have spread.⁶⁶ Gallagher also links the increase in labour bargaining power directly to the worker shortage, arguing that these shortages are a function of three issues: the decline in the working population as a consequence of the one-child policy; policy changes in agriculture, including sharp decrease in taxes in rural areas and increases in rural infrastructure; and institutional discrimination against migrants.⁶⁷

4.2.5 The Labour Dispute Resolution System

The formal labour disputes resolution system in China includes “one mediation, one arbitration, two trials.” According to Labour Law of 1994,⁶⁸ the procedure for dealing with a labour dispute is as follows: 1) enterprise mediation committee; 2) tripartite consultation, including workers, Labour Bureau and trade unions; 3) labour arbitration; 4) court. Labour arbitration is compulsory before a case is brought to a court.⁶⁹ Some literature challenges that such general and abstract rules were insufficient in view of the rapid economic development and increasingly sophisticated labour disputes in China.⁷⁰

The formal labour disputes resolution system in China remains inefficient and ineffective,

⁶⁶ Simon Clarke and Tim Pringle, “Can Party-Led Trade Unions Represent Their Members?” *Post-Communist Economies* 21.1 (2009): 85.

⁶⁷ Mary E. Gallagher, “We Are Not Machines, Teen Spirit on China’s Shopfloor,” *China Beat*, January 29, 2014, accessed September 26, 2015, <http://www.thechinabeat.org/?p=2538>.

⁶⁸ Labour Law of People’s Republic of China (1994), http://www.gov.cn/banshi/2005-05/25/content_905.htm.

⁶⁹ *Ibid*, Clause 77-83.

⁷⁰ Yun Zhao, “China’s New Labour Dispute Resolution Law: a Catalyst for the Establishment of Harmonious Labour Relationship?” *Comparative Labour Law and Policy Journal* 30:2 (2009): 409.

⁷¹ especially for migrant workers who have gradually become a majority of the China's labour force.

In this formal dispute resolution system, the Labour Mediation Commissions used to be the most important body to resolve labour disputes in the pre-reform era; however, they have been greatly devalued since the market economic reform has changed the employment relationship in China.⁷² The Labour Arbitration Committees (LACs) are supposed to have autonomy from the Labour Bureau, however this seldom occurs in society. Many professionals, from professors to lawyers, may serve as “part-time” arbitrators; however, Labour Bureau officials alone are able to serve as “full-time arbitrators.”⁷³ As one LAC official in Beijing stated, panels have three arbitrators only to “give the appearance of justice.”⁷⁴ Another notable disadvantage of this labour resolution system is the inconsistency of the manner in which labour arbitration and litigation are applied; in turn, this influences the efficacy of the entire arbitration system. An essential duty of labour litigation is to reevaluate arbitration awards, and this is a waste of arbitration resources.⁷⁵ On occasions when the committee rules that workers be compensated, these employees may never receive their payments. The Labour Bureau, in fact, does not have any authority to force employers to pay. Then workers have to once

⁷¹ Hwang, Kyung-Jin, and Kan Wang. Labour Dispute Arbitration in China: Perspectives of the Arbitrators. *Employee Relations* 37 (5): 2015: 582.

⁷² Zhao, *supra* n. 70.

⁷³ Rules on Organization of Labour Dispute Arbitration Committees, http://www.mohrss.gov.cn/gkml/xxgk/201407/t20140717_136057.htm. Clause 13.

⁷⁴ Halebua, *supra* n. 41.

⁷⁵ Zhao, *supra* n. 70.

again put forth a grievance to enact compulsory enforcement.⁷⁶

Going to court is always a costly and time-consuming process.⁷⁷ A report produced by the Beijing Migrant Workers Legal Aid Station reported that the process took an average of 11 months.⁷⁸ Shenzhen's Labour Bureau revealed that it took from 11 to 20 months to go through labour arbitration and two trials in 2001.⁷⁹ Another report in Beijing shows a minimum cost of formal procedures is 920 yuan.⁸⁰ Therefore, many workers, especially migrant workers, feel that it is not worth going through the legal formal resolutions system. As stated by Wei Wei, the founder of a NGO focusing on aiding migrant workers, "once it enters that stage, the worker has already lost."⁸¹ Moreover, Chinese courts normally have poor capability of enforcing judgments. Hence, even after arbitration and two trials, workers often are left with a slip of paper and no money.⁸²

⁷⁶ Mary E. Gallagher, "Use the Law as Your Weapon!: Institutional Change and Legal Mobilization in China," in *Engaging the Law in China: State, Society, Possibilities for Justice*, eds. Neil J. Diamant, Stanley B. Lubman, and Kevin J. O'Brien (Stanford.: Stanford University Press, 2005).

⁷⁷ Shen, *supra* n. 3.

⁷⁸ Beijing Migrant Workers Legal Aid Station, *Report on Cases Involving Migrant Workers' Unpaid Wages (Nongmingong qianxin anjian yanjiu baogao)* 2.3 (October 2006), accessed October 12, 2015, http://www.zgnmg.org/zhi/dybg/bg002_1.htm.

⁷⁹ Virginia Harper Ho, *Labour Dispute Resolution in China: Implications for Labour Rights and Legal Reform* (Regents of the University of California, 2003).

⁸⁰ Tong Lihua and Xiao Weidong, Beijing Youth Legal Aid and Research Center, *Investigative Report on the Rights Protection Costs of Chinese Migrant Workers (Zhongguo nongmingong weiquan chengben diaocha baogao)* 4.2 (Sept. 2005).

⁸¹ Wang Wentao and Deng Jing, "The Words of a Courageous Group of Migrant Workers: How High can 'Little Bird' Fly? (*Yongwei jincheng dagong qunti daiyan "Xiao Xiao Niao" neng fei duo gao?*)," Xinhua Net, January 12, 2006, accessed November 20, 2015, http://news.xinhuanet.com/focus/2006-01/12/content_4037149_2.htm.

⁸² Halebua, *supra* n. 41.

The new Labour Dispute Mediation and Arbitration Law of 2008 do not essentially shift the “one mediation, one arbitration, two trials” structure, but it makes some important changes that could benefit workers. For instance, the new law prolongs the time span to initiate a complaint from two months days to one year.⁸³ It also provides shorter arbitration acceptance time, and required the arbitral to render an award within 45 days.⁸⁴ The new law makes arbitral awards legally effective for several categories of cases, including unpaid wages.⁸⁵ Workers could apply to the court for a payment order with the mediation agreement in diverse cases, including payment in wage arrears, medical care expenses for occupational injury, or compensation.⁸⁶ This is a significant amelioration to the previous system, and helps employees to save a great deal of money and time to go through the litigation process.⁸⁷ It shows legislators’ intention to balance the power between workers and employers.⁸⁸ In addition, there are more improvements to the formal labour disputes resolution system. For instance, the arbitral tribunal may award an initial settlement to portions of a case where facts have been ascertained, and subsequently determine a final judgment to augment the settlement.⁸⁹ This helps to safeguard workers’ basic ability to live.⁹⁰ In many cases, according to the new law, the

⁸³ Labour Dispute Mediation and Arbitration Law, Clause 27.

⁸⁴ *Ibid*, Clause 43.

⁸⁵ *Ibid*, Clause 47.

⁸⁶ *Ibid*, Clause 16.

⁸⁷ *Ibid*, Clause 48.

⁸⁸ Halegua, *supra* n. 41.

⁸⁹ Labour Dispute Mediation and Arbitration Law, Clause 43.

⁹⁰ Zhao, *supra* n. 70.

labour arbitration fee could be waved,⁹¹ and the new law clearly relieves workers from burden of proof.⁹²

Some literature argues that the labour disputes in China “diffuse” in different ways, including strikes, collective bargaining, consultation, mediations, arbitrations, court, etc.. For instance, Brown argues that China is moving forward to defuse the diffused labor dispute activities. New regulations have been issued to improve on the elimination, diminution, or settlement of labor rights disputes by creating increasingly sophisticated channels. ⁹³ Some literature explores that the formal legal system of labour dispute resolution in China does not provide effective protections on workers. For instance, Hwang challenges that the formal legal system endeavors to promote the regime’s capacity to rule over labour relations, rather than establish an impartial platform. He argues that the recent reform excluded arbitrational independence because of the concerns about reducing the Party’s arbitrary power. The arbitrators have to manoeuvre between the different political economic interests, above safeguarding labour rights. ⁹⁴

Much literature explores the importance of labour mediation. For instance, Zhuang

⁹¹ Labour Dispute Mediation and Arbitration Law, Clause 53.

⁹² Labour Dispute Mediation and Arbitration Law, Clause 6.

⁹³ Ronald C. Brown, “Defusion of Labour Disputes in China: Collective Negotiations, Mediation, Arbitration, and the Courts.” *China-EU Law Journal* 3 (2014).

⁹⁴ Hwang, Kyung-Jin, and Kan Wang. Labour Dispute Arbitration in China: Perspectives of the Arbitrators. *Employee Relations* 37 (5): 2015: 582.

highlights that the past few years have witnessed the revival of mediation as a chief method of labour dispute settlement in China. The central government and local authorities have reinvigorated the use of mediation in order to control social conflicts and maintain stability, as mediation can better serve their policy priorities and bureaucratic interests. Zhuang argues that the extensive employment of mediation by local authorities has chipped away at the role of legal procedures in settling labour disputes.⁹⁵ Neal also argues that the “mediation” component is designed to operate at the enterprise level, and aims to prevent disputes from intervening outside the enterprise.⁹⁶ Halegua also argues that informal mediation is the most effective means of dispute resolution for migrant workers.⁹⁷ Shen agrees that informal mediation institutions are drawn from both historical and cultural background. A common Chinese saying among villagers warns, “One case in court, a lifelong enemy ahead”; mediation does not necessarily destroy the relationship between employers and workers, because it is based on persuasion and dialogue, not confrontation and animosity.⁹⁸ Chen also points out that mediation provides a better forum where the law is not clear, and mediation is often expected to provide a better outcome for workers than litigation or arbitration.⁹⁹ According to Huang,

⁹⁵ Zhuang, Wenjia, and Chen, Feng. "Mediate First": The Revival of Mediation in Labour Dispute Resolution in China. *The China Quarterly* 222 2015: 380.

⁹⁶ Alan C. Neal. “Implementing ILO Fundamental Labour Rights in China: A Sensitive Meeting of Form and Substance?” in Ulla, Liukkunen, and Chen, Yifeng. *Fundamental Labour Rights in China - Legal Implementation and Cultural Logic*. Volume 49, New York: Springer, 2016.

⁹⁷ Halegua, *supra* n. 41.

⁹⁸ Shen, *supra* n. 3, 94-105.

⁹⁹ Feng Chen, “Legal Mobilization by Trade Unions: The Case of Shanghai,” *The China Journal* 52.52 (2004): 27.

mediation in China is “more about morality, rather than law;” “about harmony, rather than justice;” “about compromising and forgiving, rather than forbidding and punishment.” Huang argues that such mediation is a persistent distinctive aspect of China’s legal system.¹⁰⁰ In recent years, some NGOs and individuals have emerged to help workers’, especially migrant workers’ rights by informal mediation, such as Little Bird.¹⁰¹ They are more willing and more flexible to help migrant workers, and hence they are more effective than formal mediation organizations. For instance, in 2004, Little Bird recovered over 15 million yuan for 1,269 migrant workers.¹⁰²

4.3 Migrant Construction Workers’ Legal Culture Regarding Labour Disputes

Although a lot of literature has explored labour disputes in China, less attention paid to migrant workers’ legal culture with regard to labour dispute and related legal system in China. There has been even less attention on migrant construction workers’ legal culture. Based on interviews of 34 migrant construction workers from Shuangfeng Town, this study explores the major causes and the nature of migrant construction workers’ labour

¹⁰⁰ Philip C. Huang, “Morality and Law in China, Past and Present,” *Modern China* 41 (2015): 8.

¹⁰¹ Aaron Halegua, “Reforming the People’s Mediation System in Urban China,” *Hong Kong Law Journal* 35 (2005): 724.

¹⁰² Wang Wentao and Deng Jing, The Words of a Courageous Group of Migrant Workers: How High can “Little Bird” Fly? (*Yongwei jincheng dagong qunti daiyan “Xiao Xiao Niao” neng fei duo gao?*) Xinhua Net), January 12, 2006, accessed March 19 2015, http://news.xinhuanet.com/focus/2006-01/12/content_4037149_2.htm.

disputes, and their main resolution means. Migrant construction workers' ideas, opinions, as well as attitudes with regard to labour dispute and the dispute resolution system in China are illustrated through their experiences in different cities across China.

4.3.1 Major Cause of Labour Disputes – Wage Default

Among the 34 interviewees, only two claimed they never had any labour dispute. One is Chutian, born in 1953; the other is Guohui, born in 1964. Of the remaining 32 interviewees, almost all of their labour disputes regard wage default, no matter how old they are, their education background, or the cities in which they work. Most interviewees have been involved in wage arrears more than once. For migrant construction workers, in most cases, “labour dispute” simply means wage default. In fact, they never expect other kinds of labour rights. As they consistently explained, “We only want money, nothing else.” As Liang said, “We never ask for any other things, better food, accommodation, or insurance. And they would not give us even if we asked. We only work for money. As long as the bosses pay us by the end of the year, it is good enough.”¹⁰³ Renhai also told me, “We work for money, only for money. If we can get cash by the end of the year, we are very satisfied.”¹⁰⁴

Unfortunately, the construction industry is the hardest hit area of wage arrears in China.

¹⁰³ Juan Li, (December 28, 2014), Personal Interview.

¹⁰⁴ Juan Li, (January 16, 2015), Personal Interview.

Thanks to the “efficient” subcontracting system, there are many chances for migrant workers at the bottom tier of this industry chain to lose their salaries. In a typical construction project, owner, developer, and general contractor all transfer their financial burden and risks to subcontractors. The subcontractors at higher tier also transfer part, or even all, of their burden to the subcontractors below them. By the end, labour subcontractors and migrant workers have to walk at the edge of a cliff. Moreover, in the construction industry, contractors and subcontractors are often paid based on the process, and workers normally get their wages after the project is completed, or even by the end of that lunar year. The long-term payment and multi-tier subcontracting system greatly increases the risk and amount of wage defaults. If one of the subcontractors ran away with money or refused to pay to the subcontractor at lower tier, which often happened, the migrant workers ended up with no wages. Hence, when I asked my interviewees whether they had been involved in wage defaults, they always responded, “Yes, of course! Who hasn’t?”

What is worse, it was very difficult for migrant workers to recover their arrear wages, especially before 2003. The formal legal procedures remained ineffective, expensive, and time-consuming for migrant workers; while governments preferred business over workers, and did not have the motivation or interest in helping workers, especially before 2003.¹⁰⁵ Hence, when migrant workers turned to government agencies for help, many officials

¹⁰⁵ Chen, *supra* n. 1; White, *supra* n. 1.

tended to push them out, and claimed that it was not their duties to deal with labour disputes. In most cases, migrant workers could do nothing but leave. As a result, migrant construction workers choose to stay in their autonomous system built by Xiaogan people in the construction industry, because it was much easier to get their money back in their hometown.

Among all the frustrating stories of wage defaults before 2003, there were only a few successful cases. For instance, Renhai told me of his experience of wage default in 2002 in Beijing. When the project was finished, the big boss refused to pay, and drove the migrant workers and their little boss out of the site. They had to sleep in the street. Many workers left, and only five of them stayed to ask for money, including Renhai. They tried everything, called 110, appealed to the Labour Bureau, went to the Beijing Government, and went to the Public Security Bureau. But nothing worked. Many times, they were not even allowed to enter the government agencies, and could only stay in the gatehouse. None of the agencies provided help, and most claimed that it was not their duty to deal with labour disputes. The migrant workers decided to stick to the Public Security Bureau. They stayed there day after night, and refused to leave. They claimed they would appeal to a higher level of government if the Public Security Bureau would not help them. By the end, the policemen agreed to help. They called the contractor and required him to pay off the wages. These five migrant workers were finally paid in full amount after more than one month persistent arguing and appealing in Beijing. As Renhai said, “We could

not swallow the grievance and anger. It is our money, earned by sweat and blood! I must get it back!”¹⁰⁶

4.3.2 Much Less Wage Default Since 2003

Nearly all interviewees agreed that wage defaults had happened much less in recent years, especially in 2010s, and they believed that favourable policy since 2003 was the main reason for these changes. For instance, Xinghua, born in 1970, a tilling master, said, “Nowadays, our workers’ wages are seldom defaulted. In the past, it always happened. Since the policy is better. In the past, there is no place that we could turn to (if there was a wage default), but now we can turn to Labour Bureau.”¹⁰⁷ Aiguo also said, “Now it is OK to delay payment for bosses, but it is not OK to default our workers’ wages, because we can accuse them to Labour Bureau.”¹⁰⁸ Many of them mentioned Labour Bureau; however, only a few have actually contacted it, and most just overheard about it. For instance, Aiguo explained, “I heard that the Labour Bureau would call the bosses and require them to pay off the wages. But I’ve never been there.”¹⁰⁹

For many respondents, 2003 was the beginning of these changes. For instance, Xiaozhan pointed out that, in that year, Premier Zhu Rongji helped a construction migrant worker

¹⁰⁶ Juan Li, (January 16, 2015), Personal Interview.

¹⁰⁷ Juan Li, (January 4, 2015), Personal Interview.

¹⁰⁸ Juan Li, (February 1, 2015), Personal Interview.

¹⁰⁹ *Ibid.*

recover his unpaid wages. Subsequently, as Xiaozhan explained “Zhu Rongji [published] a new policy, prohibiting wage defaults to migrant workers.”¹¹⁰ In reality, Premier Wen Jiabao pioneered these efforts, rather than rather than Zhu Rongji, Xiaozhan recalled. In October 2003, Premier Wen Jiabao helped a migrant construction worker to recover his wage arrears of 2240 yuan.¹¹¹ This event was often regarded as the initiation of the Wages Campaign around China from 2004 to 2007. According to Biddulph *et al.*, since the late of 1990s, at both local and national levels, there had already been growing awareness of, and concern about, the increasing social disruption flowing from exploitation and abuse of migrant workers in cities, However, prior to the Wages Campaign, Chinese regulations did little to address the issues related to wage defaults in construction industry.¹¹² The Wages Campaign was declared a success. As the chairman of the NPC Standing Committee, Wu Bangguo, reported that in most provinces the “historical problem” of non-payment of wages to migrant workers had been “basically resolved.” Wu announced that by the end of 2006, the amounts of unpaid wages of RMB 33 billion accumulated before 2003, had all been paid. In some areas where problems were ongoing, Wu anticipated the problems would be resolved by mid-2008.¹¹³ This

¹¹⁰ Juan Li, (February 1, 2015), Personal Interview.

¹¹¹ Verna Yu, “Pay day at last after Premier aids a peasant; Wen Jiabao is quick to end impoverished worker’s plight,” South China Morning Post, Oct. 29, 2003, p.6.

¹¹² Sarah Biddulph, Sean Cooney, and Ying Zhu, Rule of Law with Chinese Characteristics: The Role of Campaigns in Lawmaking. *Law & Policy*, 34 (4) 2012: 373-401.

¹¹³ China News Web. “Most Provinces in China Have already Fundamentally Resolved the Historical Problem of Delayed Payment of Wages,” March 8, 2008, <http://www.chinanews.com.cn/gn/news/2008/03-08/1186062.shtm>. Accessed on June 10, 2017.

Wage Campaign, as well as the related regulation and police changes, may answer the question why most interviewees of this study felt that there have been much less wage arrears since 2003.

Some interviewees mentioned an important policy in the construction industry: deposits for migrant workers' wages. For instance, Guohui, a site manager, told me that construction companies in Guangdong need to pay a wage deposit in advance when they contract a project, "If you want to contract or subcontract a project, you must pay a deposit of 1 to 2 million yuan. This deposit only will be returned after the project is completed and all the workers' wages are paid off."¹¹⁴ He was not sure the department to which the "deposit" should be paid, and assumed it was the Urban Construction Administration Office (Chengshi Jianshe Guanli Bangongshi)¹¹⁵ Guohui also mentioned that subcontractors needed to pay a deposit to general contractors, as well. Hongliang thought this wage deposit should be paid to the Labour Bureau,¹¹⁶ while Jinyun believed that it were banks that held the wage-deposits.¹¹⁷

4.3.3 Wage-Deposit System in the construction industry

Although respondents were unclear as to which premier helped migrant workers to

¹¹⁴ Juan Li, (December 23, 2014), Personal Interview.

¹¹⁵ 城市建设管理办公室.

¹¹⁶ Juan Li, (2014, December 28), Personal Interview.

¹¹⁷ Juan Li, (January 20, 2015), Personal Interview.

recover wages, or to which department wage deposits should be paid, they did perceive the changes and trends correctly. As explored in Chapter 2, the regime started to change policies and regulations regarding migrant workers from the early 2000s. Subsequently, in 2006, an important policy was issued, *Some Opinions of the State Council on Solving the Issues of Migrant Workers* (hereafter, *Opinions*).¹¹⁸ Clause 6 established a wage-guarantee system to protect migrant workers' interests. It demanded government agencies strictly regulate employers' payment behaviours, and ensured that migrant workers were paid fully, and on time. Employers with histories of wage arrears would now be required to deposit money in advance, in a special wage-account. This wage-account must be supervised and managed, and cannot be used for other purposes. The *Opinions* also underscored that payment arrears in government projects must be resolved effectively. If funds were not sufficient in advance, construction permits would not be granted. The regulation also punished employers who default on migrant workers' wages. The punishments could range from suspending businesses, to reducing or cancelling construction qualifications, or revoking a business license.¹¹⁹

The *Opinions* is one of the most important policies regarding migrant workers in China. It introduced a series of measures to increase migrant workers' income, to enhance their occupational skills, to raise the proportion of being covered by social insurance, and to

¹¹⁸ *Some Opinions of the State Council on Solving the Issues of Migrant Workers*, accessed December 23, 2016, http://www.gov.cn/zhuanti/2015-06/13/content_2878968.htm.

¹¹⁹ *Ibid*, Clause 6

protect their labour rights.¹²⁰ Many local governments published policies regarding the implementation of the *Opinions*. For instance, in 2009, the Guangzhou government enacted the *Administration on Wage Payment in the Construction Industry in Guangzhou*.¹²¹ It explicitly requires that construction companies open wage-deposit accounts before starting projects. The owner or the developer must transfer wage deposit, which is 2 percent of the total contract price, into the wage-deposit account. The wage deposit should be from 100 thousand yuan to 3 million yuan. This policy in Guangzhou underscores that if the wage-deposit is not fully paid, a construction permit will not be granted.¹²² It explicitly points out three conditions under which the wage-deposit should be used to pay workers, including: 1) the construction enterprise has financial difficulties, and cannot pay workers; 2) the project is completed or stopped, but workers' wages have not been paid fully; or, 3) other necessary circumstances that have been approved by the Human Resources and Social Security Department.¹²³

In 2014, the State Council issued another important policy regarding migrant workers, *Some Opinions of the State Council on Further Improving the Service for Migrant Workers*.¹²⁴ Only by comparing the titles of these two policies of 2006 and 2014, we can

¹²⁰ *Some Opinions of the State Council on Further Improving the Service for Migrant Workers*, accessed December 24, 2016, available at: http://www.gov.cn/zhengce/content/2014-09/30/content_9105.htm.

¹²¹ *Administration on Wage Payment in the Construction Industry in Guangzhou*, accessed December 24, 2016, <http://sfzb.gzlo.gov.cn/sfzb/file.do?fileId=E91163A788CF4113B5B8459D20D478B7>.

¹²² *Ibid*, Clause 5.

¹²³ *Ibid*, Clause 10.

¹²⁴ *Some Opinions of the State Council on Further Improving the Service for Migrant Workers*, retrieved on

get a sense of the different attitudes of the regime. Clause 8 of the 2014 *Opinions* further requires enhancing the wage-guarantee system in the construction industry. It obliges the establishment of a wage-deposit system in the construction industry, and building wages-emergency-fund system in some areas. It also requires improving and implementing a general-contractor-responsibility system, which obliges the general contractor to be responsible for wages of all migrant workers involved in a project. It demands a joint system of labour-security-administration and criminal justice, and requires local governments to take full responsibility to resolve wage default problems. It obligates the promotion of a real-name system of debit card for wage payment. Most importantly, it clearly points out the agencies in charge of implementing Clause 8, including the Ministry of Human Resources and Social Security, the Ministry of Public Security, the Ministry of Housing and Urban Construction, the People's Bank, the High Court, and the All-China Federation of Trade Unions.¹²⁵

Many local governments amended their policies on the wage-deposit system based on the *Opinions* of 2014. For instance, Guangzhou amended *Administration on Wage Payment in the Construction Industry in Guangzhou* in 2014.¹²⁶ This explicitly outlines the process of using wage-deposits: when workers' wages are defaulted upon, the relevant

December 24, 2016, available at: http://www.gov.cn/zhengce/content/2014-09/30/content_9105.htm.

¹²⁵ *Ibid*, Clause 8.

¹²⁶ *Administration on Wage Payment in the Construction Industry in Guangzhou*, amended in 2014, accessed December 24, 2016,

http://www.gzns.gov.cn/longxue/bmfw_1/ldjy/201504/t20150422_161094.html.

administrative department will instruct the general contractor and bank to use the wage-deposit. The contractor should pay workers' wages under the supervision of related administrative department. The stipulation also reduces the maximum amount of wage deposit from 3 million to 2 million yuan.¹²⁷ The "related administrative department" varies in different regions, but refers most often to the Labour Bureau in most circumstances.

It is doubtless that these policies at all levels in China since the beginning of 2000s have established a more effective system for protecting migrant construction workers' payment rights. These policies have been more effectively implemented in developed areas, such as Beijing and Guangzhou; they have gradually become influential in less developed areas, such as Hubei and Northeast. They have significantly improved the conditions of wage arrears in the construction industry.

4.3.4 Industrial Injury Compensation

Due to the lack of basic security protections for migrant workers, work-related injuries happen frequently in the construction industry. Before the formal interview process began, I suspected that work-related injury compensation would be an important cause of labour disputes. However, among the 34 interviewees, only one has experienced occupational

¹²⁷ *Ibid.*

injury, although there were several second-hand stories from other interviewees. However, all of these occupational injuries ended peacefully, and did not lead to any dispute, though the compensation and allowance of occupational injury is low and unfair.

In theory, the compensation of occupational injury in China is not bad. According to *Regulations on Industrial Injury Insurance*, amended in 2010,¹²⁸ workers' labour ability should be appraised after industrial injuries. There are ten levels of labour disabilities, with level 1 being the most severe.¹²⁹ This system regulates the one-time disability compensation for disability Level 1 as 27 months' wages, Level 2 as 25 months', Level 3 as 23 months', and Level 4 as 21 months' wages, etc. According to the *Regulations on Industrial Injury Insurance*, injured workers are also eligible for a paid monthly allowance until they retire. The allowance for Level 1 is 90 percent of their normal wages, Level 2 is 85 percent, Level 3 is 80 percent, Level 4 is 70 percent, etc.¹³⁰ This standard of compensation appears decent. However, when one learns about the standard of occupational disability in China, it becomes evident that this compensation and allowance is far from adequate. Take disability Level 1 for example; according to the *Human Body Injury Disability Grade* of 2017,¹³¹ disability Level 1 includes 14 kinds of extreme situations of disabilities, for instance, extremely severe intelligence damage; quadriplegia

¹²⁸ *Regulations on Industrial Injury Insurance*, amended in 2010, accessed December 25, 2016, http://www.gov.cn/zwggk/2010-12/24/content_1772115.htm.

¹²⁹ *Ibid*, Clause 21 and Clause 22.

¹³⁰ *Ibid*, Clause 35.

¹³¹ *Notice Human Body Injury Disability Grade*, <http://www.ft22.com/jiandingbiaozhun/6767.html>.

muscle or three limb paralysis muscle strength; severe non-limb-paralysis, etc.¹³²

Since most migrant workers in the construction industry do not have labour contracts, it is almost impossible for them to demand a continued monthly allowance. In reality, injured workers normally get one-time compensation, and then must return home. Considering the high incidence of work-related injuries and disabilities, and the low standards of compensation, employers in China are glad to pay the one-time compensation, and normally require a promise from the injured worker that he will not pursue further compensation in future.

According to the primary data, there are two ways of settling work-related injury disputes, Gongliao or Siliao.¹³³ In Chinese, these two terms always come in pairs. Gongliao means to settle a dispute by formal legal proceedings; Siliao means settle a dispute informally and between two parties, or mediated by informal third party. In occupational injuries, both employers and workers are willing to “Siliao,” settling the issue themselves, as the legal process is time consuming and complicated. Employers may be punished for suspending a project due to the accident; therefore, they are eager to resolve the issue by paying more money than the amount obliged by the regulations. As for workers, even though they go through the legal procedures, what they get by the end is often no more

¹³² *Ibid.* Clause 5.1.

¹³³ Gongliao (公了), and Siliao (私了).

than what the employer offers in the first place. As such, they often agree to take the compensation, and leave the host city immediately. Moreover, in an increasing number of areas, construction companies are obliged to purchase accident insurance for migrant workers; otherwise, construction permits are not granted.¹³⁴ In these cases, the insurance companies pay medical expenses. Hence, employers and workers can easily reach a consensus, and most occupational injuries do not transform into labour disputes.

Hongliang, born in 1965, lost the first segment of his right-hand forefinger in 2013, in Beijing. It was squeezed off by a machine. His boss, Lao Xi, paid all of the medical expenses in advance, and for the loss of working time. Hongliang's brother-in-law helped him to find a lawyer. The lawyer told Hongliang that this would be a Level 9 disability, with compensation around 40 thousand yuan. Lao Xi offered a compensation of 50 thousand yuan, plus two months' wages. Hongliang said, "I do not want to have dispute with Lao Xi, and we get along well with each other, so 50,000 is OK."¹³⁵ Hongliang stayed in Beijing for around twenty days after the accident. He said, "It was awful! I could not eat well and lived in a dark basement. I could not take any more and chose to go back home. Lao Xi bought me the train ticket."¹³⁶ However, Hongliang did not think that 50 thousand yuan was enough to compensate for his loss: "Of course it cannot

¹³⁴ *Notice of Construction Department of Guangdong Provincial on Issuing the Guidelines for Construction Accident Insurance in Guangdong*, retrieved on December 25, 2016, available at: <http://www.csai.cn/study/203541.html>.

¹³⁵ Juan Li, (December 28, 2014), Personal Interview.

¹³⁶ *Ibid.*

compensate! I feel weak after the injury, and I was so strong before that! I cannot even eat with chopsticks yet, but a spoon! It feels so bad!”¹³⁷ But Hongliang thought that he could do nothing about it, because the lawyer told him that the compensation would be around 40 thousand. In this sense, Hongliang felt a sense of powerlessness¹³⁸

4.3.5 The Nature of Labour Disputes in the construction industry

The nature of migrant construction workers’ labour disputes combines reactive and proactive, defensive and offensive tactics. Migrant workers normally take proactive actions, before deciding to accept job offers, and act reactively after their wages have been defaulted upon. When a boss is a co-villager, like in most cases, migrant workers are defensive initially, and become increasingly offensive as the issue persists.

In order to reduce the possibility of wage default, workers carefully choose their bosses. All interviewees said they choose bosses based on two criteria: their financial capability and reputation. Thanks to modern communication, and a tradition of clan living, it is convenient for migrant workers to know fair market prices for jobs on construction sites in different cities. Information travels among workers from the same hometown. All migrant workers return to their hometown sooner or later in the twelfth lunar month, and

¹³⁷ *Ibid.*

¹³⁸ *Ibid.*

rest for the winter. Families and friends get together every day. They drink wine, smoke cigarettes, and play poker and Majiang together. Naturally, they chat about their bosses and jobs.

With most leaving their hometowns in March, or after the Qingming Festival, which is April 4th or 5th, there is plenty of time to exchange information, and make clear decisions on which city they are going to work in, and the boss for which they will work in the upcoming year. Because of labour shortages in recent years, migrant construction workers, especially those with good skills, have more choices. In order to recruit employees, bosses often visit workers' houses during Spring Festival, bringing presents and warm words, and sometimes even paying 10 thousand or even 20 thousand yuan in advance to workers. However, popular workers do not want to take any advance money, as they want to carefully choose their best option.

When they accept a job offer after careful consideration, their behaviour tends to be more reactive. Migrant construction workers never demand rights or benefits beyond wages. They never regard themselves as “workers,” but rather as “peasants,” and do not believe they are eligible for other “labour’ rights.” Labour contracts? Medical insurance? Weekends with payment? Pension allowance? “No, those are for the ‘formal’ workers and

urban residents, not for us,” Chutian explained.¹³⁹ What is more, they accept the unwritten rule in the construction industry and their hometown that they only get paid at the end of every lunar year. As long as the boss pays them by then, he is a good boss.

Another unwritten rule is that migrant workers only ask for money from their little boss, the immediate subcontractor who recruits them, and who is always their co-villager. Whether the general contractor or subcontractor at a higher tier pays their little boss, the migrant workers do not care. They believe it is the little boss’ responsibility to ask for money. Only when a little boss organizes them to take progressive actions to ask for money from the “bigger boss,” will they follow; however, they regard this as a favour to the little boss, rather than their own labour dispute. They support their little boss by many aggressive means, such as blocking the site entrance, cutting off electricity and water on site, demonstrating in front of the contractor’s company or even Labour Bureau, or even threatening to commit suicide. The purpose is to attract enough attention from local authorities and media, in order to put pressure on the contractor and local government to resolve the problem.

For instance, Zhao told me of his experience in the Northeast. There, a general contractor refused to pay Zhao’s little boss, who was Zhao’s co-villager. As Zhao explained:

Our boss asked us to stop working, to ask for money with him.

¹³⁹ Juan Li, (January 6, 2015), Personal Interview.

Normally it's not our business. But this time the project is about to finish, and our boss could not get the money yet. So we all went to the company with him, around fifty people, all Xiaogan workers. We blocked the gate, and our boss went inside to talk with the company.¹⁴⁰

When asked about the dispute's result, Zhao thought for a while, and answered, "I am not sure. We all left when the project finished, and our boss stayed there asking for money. I don't know the result, but the little boss paid me by the end of that year."¹⁴¹

Another young boy, Wei, also had an adventure in the Northeast. Once, the general contractor had not paid Wei's little boss for a long time, and the little boss could not even buy food for the migrant workers. The little boss asked his workers to stop working, block the gate of the site, and cut off electricity and water. He asked three young boys, including Wei, to climb up to a high tower, which was tens of meters high, and threatened that if the contractor would not pay, the migrant workers would commit suicide. Although this seems shocking, Wei shrugged, "It's not a big deal. I would not jump anyway."¹⁴² Their aggressive actions successfully attracted attention from the media, and journalists arrived on site in a short time. The contractor agreed to pay right away under the pressure. However, the saddest part of this story is that, after Wei and his friends climbed down of the tower, and the journalists left, the general contractor only paid Wei's little boss a small part of the arrears. As with Zhao, he did not care much about the result of the

¹⁴⁰ Juan Li, (February 5, 2015), Personal Interview.

¹⁴¹ *Ibid.*

¹⁴² *Ibid.*

dispute, and did not know whether the contractor paid his little boss later. He left the site when the project finished and received his wages in full by the end of lunar year.

4.3.6 Major Resolution Means – Conservative, Informal and Violent

The nature of migrant construction workers' dispute resolution remains primarily conservative and informal. They adopt different strategies whether dealing with labour disputes within their autonomous system or out of it. Within their autonomous system, the ambiguous identity of "migrant workers" returns to that of "peasants," though they barely do farm or agricultural work. In these internal situations, wage disputes defaults simply become personal debt disputes between two rural residents, rather than labour disputes between employees and employers. Workers essentially try to resolve the problem by pressuring on ethical and familial grounds. Considering that most Xiaogan migrant construction workers choose to work for Xiaogan bosses, ethical pleas and family relationships remain a major means with which to resolve labour disputes in the construction industry, at least in Xiaogan area.

Migrant construction workers normally do not regard wage default as a "dispute" in the first two or three years. They still have faith that the little boss has a conscience and capability to pay them back. They visit the boss' houses frequently, expressing grievances;

for instance, “My daughter-in-law will have a baby in soon, and the medical fee is very expensive,” or “I need to take a training course for driver’s license, but I don’t have that money.” In most cases, bosses will try every means possible to pay them back, and disputes will be resolved amicably, or at least, will not turn hostile.

In other cases, normally after repeated disappointments, workers lose hope, and many turn to violence. They stay at the bosses’ houses and refuse to leave. They force the boss to pay them back, and initiate fights. I even heard stories of kidnapping, harm, and murder.¹⁴³ For instance, Yafang had a labour dispute in 2007. The little boss was his co-villager, owed him around 3,000 yuan. It took him five years to get the money back. Every year, Yafang went to the little boss’s house asking for the money. During the Spring Festival of 2013, Yafang finally lost patience and stayed in the little boss’s house, refusing to leave. They fought with each other, and ultimately the little boss paid Yafang in full. For Yafang the reasoning to turn violent was simple: “What else can I do? My kids need to go to school, and I need money! He must pay me back!”¹⁴⁴

As discussed in Chapter 3, the ethic among family and clan members is surprisingly powerful. In most cases, bosses try every means possible to pay workers’ wages on time. They stay in host cities quite late every year to ask for money from contractors; they use

¹⁴³ These are second-hand stories that I heard from my interviewees, but not my interviewees’ personal experiences.

¹⁴⁴ Juan Li, (December 10, 2014), Personal Interview.

their own money to pay off wages if they have not been paid, and they even borrow to fulfill their promise. In rural China, “face” and reputation mean a lot, especially for those who want to run their own business in the construction industry. However, despite best efforts, sometimes subcontractors cannot fulfill their duties. Especially since the beginning of 2010s, due to the global economic crisis, and “anti-corruption and clean-government campaign,” the construction industry in China has been shrinking. Many projects were cut, and many developers and investors’ cash flow was cut off. When losing too much, sometimes subcontractors cannot save “face” or take reputation into consideration.

Some workers may simply give up on collecting bad debts if the amount is not significant, because they do not have time to argue, or because they do not want to argue with relatives or good friends. However, in these cases, workers will not work for that boss again, and will spread information about the boss to relatives and acquaintances. For instance, Jinyun told me his experiences of labour disputes, “The boss owed me a couple of thousand yuan. It was not much. I have no time to argue with him all the time, and had to let it go. But definitely, I would not work for him anymore.”¹⁴⁵ In some cases, some bosses have to choose to flee from their hometowns, and never return. For a rural resident who cares much about clan and family relationships, the cost is too high.

¹⁴⁵ Juan Li, (January 20, 2015), Personal Interview.

In other cases, when migrant workers have very good relationships with their little bosses, they may feel awkward to push the boss too hard. For instance, in 2007 Wei worked for his brother's classmate, who owed him six months' wages, more than 20,000 yuan. This little boss had a good relationship with Wei and his brother. He offered Wei a second-hand van to balance the defaulted wages, but Wei refused. Then the little boss claimed he gave the van to Wei's brother; Wei's brother insisted that he had not accepted the offer. Wei said with a wry smile, "We are too familiar with each other. Now it's impossible to figure out the truth. Just let it go. He is very nice to us though. Every time when we need help, he shows up. How can I play hard ball with him?"¹⁴⁶ Wei also showed his understanding to his little boss, because the big boss did not pay him, and he lost around 400,000 in that year. Therefore, this little boss could no longer do business in the construction industry.

In fact, political violence underlies the arrangement of Chinese history and political culture, and it has obtained growing academic interest in recent years. For instance, Buoye also illuminates the violent conflicts over property rights in eighteenth-century in Guangdong, as well as the nature of the legal process in the high Qing period. Buoye examines that, in the Pearl River delta, modern property rights were largely accepted by the Qianlong reign (1736-95), hence the violent conflicts over property rights was much

¹⁴⁶ Juan Li, (February 5, 2015), Personal Interview.

reduced.¹⁴⁷ This study suggests that people may resort to formal legal system when dealing with their conflicts, rather than to violence, when there established a more predictable, fairly promptly, and less cost legal mechanism.

However, Rowe examines the massive violence in Macheng county of Hubei Province, which has a reputation for routine collective violence, and which is right next to Xiaogan. Rowe suggests that the continuity of violence as a deep-rooted tradition in Macheng. Apparently, this violent side seems to be contrary to the Confucian commitment to harmony and social order. According to Rowe, in Macheng, Confucian indoctrination had not been prominent. The Neo-Confucian social order as an ideal type places its hope on the maintaining of the status quo. ¹⁴⁸

4.3.7 Disorganized and Cellular Debt Dispute in Hometown

Many scholars have noted that the main features of Chinese workers' protests are decentralization and cellular activism.¹⁴⁹ However, labour disputes in the construction industry are even more disorganized and individual than those in modern factories. Different from the disciplined work in production lines requiring cooperation and

¹⁴⁷ Thomas M. Buoye. *Manslaughter, Markets, and Moral Economy: Violent Disputes over Property Rights in Eighteenth Century China*. Cambridge; New York;: Cambridge University Press, 2000.

¹⁴⁸ Rowe, William T. *Crimson Rain: Seven Centuries of Violence in a Chinese County*. Stanford, Calif: Stanford University Press, 2007.

¹⁴⁹ Lee, *supra* n. 2; Friedman and Lee, *supra* n. 41; Feng Chen, *supra* n. 49.

teamwork, there is barely any discipline or cooperation among plasterers. They work by themselves, or in families. They are their own bosses. When wages are defaulted upon, migrant construction workers tend to regard it as a personal issue between two rural residents, rather than as a labour dispute between employer and employee. In such a situation, it is hard for migrant workers to have organized and unified labour protests.

For instance, Jianguo, told me about his dispute with a subcontractor. In 2012, Huang, the subcontractor, owed Jianguo, and 30 other migrant workers from Inner Mongolia around 300,000 yuan. They waited at the construction site for around 20 days after their project completed, and had to leave when it got cold. After returning to their hometown, they went to Huang's house nearly every day in the twelfth lunar month, but Huang avoided them. On New Year's Eve, six migrant workers, including Jianguo, finally caught Huang when he attempted to return home under the cover of darkness. They demanded that Huang pay their wages; Huang explained that he had no money, and would pay the workers right away when the big boss paid him. Then some workers required Huang to write an IOU,¹⁵⁰ but Huang refused. They remained there for hours. As Jianguo explained, "Some of us insisted to stay, until we got the IOU note; but others wanted to leave. So we all left by the end with nothing. You know, everyone has different ideas. It was the New Year Eve, some wanted to go back home to celebrate the festival, and some said it was useless to stay there. Anyway, it is very hard for our peasants to do anything

¹⁵⁰ IOU means "I owe you."

together.”¹⁵¹ Jingming also mentioned a similar opinion when talking about his experiences of wage disputes: “Our peasants are really lack cohesion, you know. We cannot do anything together. I want to go, but he does not want to. Every time, there are only a few people show up, or sometimes only myself. It is useless that I went there all by myself. You know, strength lies in numbers. If we could go together, it would be better.”¹⁵² Based on the primary data, it is safe to assume that in most circumstances, there is still a lack of working class awareness and cohesion among migrant construction workers, which prevents the migrant construction workers from having more organized and unified labour protest.

4.3.8 Organized Labour Protests in Host Cities

In contrast, migrant construction workers are relatively more organized and unified when in host cities. There, workers may organize or participate in “mass actions” in order to attract attention from media and local government. The most organized labour protest I heard of during the fieldwork was from Xiaohua, one of the three high school graduates. Xiaohua worked in Yingkou city, Liaoning Province, in the early half of 2014. The contractor was a construction company from Anhui Province. It had not paid wages since October 2013, because the company had not received funds from the owner. The workers stopped working in April 2014, and asked for their wages. They appealed to the Labour

¹⁵¹ Juan Li, (February 10, 2015), Personal Interview.

¹⁵² Juan Li, (February 13, 2015), Personal Interview.

Bureau, and waited for a month, but both the owner and contractor were in financial crisis, and were incapable of paying. The migrant workers independently organized a parade of around 500 migrant workers. Xiaohua was one of the leaders of that protest.

The group demonstrated in front of the Yingkou government. Policemen attempted to stop them, saying, “This is not the government’s duty, and you should go to the Labour Bureau or Court!” The workers refused to back off, and Xiaohua challenged the policemen saying, “If the City Government Office cannot resolve our problem, we will go to the Municipal Party Committee; if they cannot help us either, and we will go to appeal to the Central Government in Beijing! We are not afraid. And we can always call China National Radio.”¹⁵³ Ultimately, this parade forced the Government Office to send representatives to talk with the workers, and promise they would take control of the situation. Xiaohua was one of the workers’ representatives. By the end, the government required the owner to pay the contractor; the Procuratorate froze the money as soon as it reached the contractor’s account. The Labour Bureau took charge of wage payment. All workers were paid in full. It was very effective and efficient.

I was impressed by Xiaohua’s experience. This organized labour protest in Yingkou may indicate an awakening of class-consciousness in the construction industry, which lacks cooperation and discipline. The assumption under which I had operated was that such

¹⁵³ Juan Li, (February 8, 2015), Personal Interview.

organized and large-scale labour protest was rare. However, Xiao responded, “It happens a lot! You seldom heard about it because you take the interviews in Hubei! Hubei is the worst! If our case happened in Hubei, it is impossible to be resolved.”¹⁵⁴ He further explained that the government agencies in Hubei Province always try to push migrant workers out when there is a labour dispute, and claim it is not their duty. Xiaohua became excited, striking the table, and questioned, “Then what are [the officials’] duties? As a government official, your duty is supposed to serve the people! Otherwise, you’d better go back home and plant potatoes!”¹⁵⁵ Your salary is from our taxes, it is our money with sweat and blood!”¹⁵⁶

It is also interesting to find that migrant workers do not always uphold the unwritten rule within their autonomous systems that they only ask for wages from their immediate subcontractor, rather than the big boss. When in their hometown, they stick to this unwritten rule and only ask for money from the little boss who is their co-villager. They claim that, because it is the little boss who recruits them, it is the little boss’ responsibility to pay their wages, no matter whether the little boss has been paid. But when migrant workers have to ask for wages from a big boss under unusual circumstances, they approach the matter differently. For instance, Yafang told me of his experience in 2012, in Inner Mongolia. His little boss, who was not his co-villager, ran off with money, and left

¹⁵⁴ *Ibid.*

¹⁵⁵ Xiaohua said the old Chinese saying, “当官不为民做主,不如回家种红薯。”

¹⁵⁶ Juan Li, (February 8, 2015), Personal Interview.

workers unpaid. All of the workers went to the general contractor's company asking for wages. The contractor said that he had already paid the little boss, and could not pay to the workers again. But the migrant workers refused to leave, claiming, "We have not received a penny. We worked in this site, and you are the boss of this site, so you should pay us. Otherwise, we would accuse you to the Labour Bureau." They also declared, "We don't care what happened between you and the little boss. We only want our salary! We worked hard, and we deserve it!"¹⁵⁷ Before Yafang and his workmates appealed to the Labour Bureau, the contractor paid them in full. In reality, the migrant workers are quite sophisticated and practical, and tend to choose the best strategy according to the situation. It is safe to assume that the reason they adhere to this unwritten rule in their hometown is not because of their loyalty to the autonomous system, but rather because of the close relationship between them and their immediate subcontractor. It would be much easier to put pressure on the little boss who directly recruits them, and easier to get their money back.

4.3.9 Aggressive and Violent Rural Youth

It is notable that the rural youth in Shuangfeng Town are more aggressive and violent than the older generation migrant workers. Among the ten interviewees born after 1980, five of them mentioned they were punished or even dismissed from middle school

¹⁵⁷ Juan Li, (December 10, 2014), Personal Interview.

because of fighting. Three of them, all born after 1990, gave me a similar astonishing answer when replying the question of whether law was important in their lives. They said law was important sometimes, because if there was no law, they might hurt someone badly or even kill others in fighting. It is because of law they knew they had to control themselves, and could not beat others too hard.

In many cases, it is impossible for migrant workers to settle labour disputes peacefully and quietly. Only when they make trouble for the bosses or local governments is their grievance heard, and acknowledged by mass media, and authorities, and hence resolved effectively. The rural youth learn believe that violence and confrontation is the best way to resolve problems. As Zhen explained, “We are not afraid of making trouble. In fact, if there is a trouble, the bigger the better. As the old saying goes, ‘nothing I have nothing I fear.’ A person with bare feet is fearless!”¹⁵⁸

Even when young migrant workers use conservative means of ethical pleas on their bosses, they act differently from their fathers. For instance, Zhen, born in 1990, told me what he would do in the coming Spring Festival of 2015. In Zhen’s case, the little boss was Zhen’s uncle, and the big boss was also their co-villager. Zhen’s uncle owed 7,000 yuan to Zhen in 2010, because the big boss, who was also a subcontractor, in this case, had not paid him. Zhen went to his uncle’s house during every Spring Festival since 2010,

¹⁵⁸ Juan Li, (December 29, 2014), Personal Interview.

but his uncle was really incapable of paying. During the Spring Festival of 2014, Zhen broke the unwritten rule in his hometown and directly went to the big boss, asking for money:

The boss said that he had no money, and I told him not to be a boss then! Don't be a boss if you cannot pay a couple of thousand yuan. I abused him, with all kinds of bad words. Shame on him! I will go to his house with my classmates this year, and we will stay there until he pays me. We will eat in their bowls, and sleep in their beds. This is quite effective! I did this before, helping my friend to ask for his money.¹⁵⁹

Although the rural youth, such as Zhen, seem quite confrontational, they are, in fact, more practical and sophisticated than they appear. They take violent actions as strategy to attract attention from the authorities. They clearly know what they can and cannot do. Violence is a carefully chosen strategy. For instance, Zhen said that he was not afraid for the boss to call 110; in fact, this is what he wanted. As Zhen explained, "If the policemen come, they would require him to pay me, too. We know how to do this, and we won't beat him badly." He would not, however, call the police himself, as, "The police would say that they are not in charge of wage disputes, and refuse to come. But if we fight, and he calls 110, the police must come."¹⁶⁰ This is partly a consequence of China's political system, and the Party regime's deep fear of public unrest. It also could be considered as an interaction between political and legal strategies for resolving conflicts in modern China.

¹⁵⁹ *Ibid.*

¹⁶⁰ *Ibid.*

4.3.10 *Going to Court Not Worth it*

Obviously, arbitration and legal trials are not options for migrant construction workers to resolve labour disputes, no matter whether in host cities or hometowns. When I asked interviewees why they did not go to court or arbitrators to resolve disputes, they provided two general answers, first, “He did not refuse to pay me. He is just out of money currently;” or second, “It is not worth [it].”

For instance, a stone factory owed Zhiliang around 80,000 yuan in 2012. Zhiliang went to the owner’s house every Spring Festival, asking for his money. Every year, the boss said a lot of nice words and made promises, and gave him some money. By the end of 2014, the owner still owed Zhiliang around 50,000 yuan. Zhiliang told me he was really worried about this debt. Then I asked him whether he had considered taking legal action to resolve this problem, such as going to arbitrator or court with the IOU notes. Zhiliang thought for a while, and answered, “It is not the right time. They did not refuse to pay me. They only said they also had lots of difficulties, because the construction company did not pay them either. It is true. He owed a lot of people, not only me. We are all at the bottom of the construction industry. The developers owe the construction companies, and the companies owe him. What can he do? And the owner is my friend, and I cannot be

too tough to him. He, of course, would pay me, and it just takes a little longer.”¹⁶¹

Another example is Xinghua who was owed 3,000 yuan by a relative in 1998. Xinghua went to this little boss’ house every year, but could not find him. This little boss owed many people in his hometown, and chose to disappear. Xinghua was very angry because, “he is so indifferent, and looks like nothing happened.” When I asked Xinghua whether he was willing to take the IOU to the arbitrator or court, he replied without hesitation, “No. It is not worthy, only for a couple of thousand yuan! One should do anything following his conscience. It depends whether he has conscience. Actually, I can find him if I really want to. I know his mother-in-law’s house, and he would go there every Spring Festival. But you know, only for such a small amount of money, how could I keep watching him every day? It all depends on whether he has a conscious or not.”¹⁶² Just as all other interviewees, both Zhiliang and Xinghua avoided settling their problems by formal legal procedures. It is true that the formal labour dispute system in China is time-consuming and expensive, but the migrant workers never attempt to try it. They simply do not consider the formal legal procedure as an option. The traditional culture of valuing harmony, and despising litigation, prevent the migrant workers from pursuing lawsuits.

¹⁶¹ Juan Li, (December 29, 2014), Personal Interview.

¹⁶² Juan Li, (January 4, 2015), Personal Interview.

4.3.11 Local Government is the Major Debtor in Some Regions

Most interviewees believe that the best way, if it is not the only way, to get wages is to get help from government. For instance, Xiaohua explained, “When a problem cannot be resolved, we must make it bigger, and attract enough attention from the government. Otherwise, the problem will never be resolved.”¹⁶³ This opinion makes a lot of sense in China, at least in the construction industry. In many cases, government agencies can easily settle wage default disputes, if they are willing to. Sometimes it is only a matter of making several calls. However, when the debtor is the government agency itself, this becomes very awkward.

Some Opinions of the State Council on Solving the Issues of Migrant Workers in 2006 also clearly outlined that payment arrears in government projects must be resolved effectively. If funds are not sufficient in advance, construction permits should not be granted.¹⁶⁴ Clearly, this was a serious problem that needed to be specifically addressed in this framework policy. Unfortunately, eight years after this important policy was enacted, some local government agencies in less developed areas remain major debtors in construction projects, and hence are still a major cause of wage defaults in some areas.

Hongxing, a site manager, told me his personal experiences in Shanxi Province, where

¹⁶³ Juan Li, (February 8, 2015), Personal Interview.

¹⁶⁴ *Some Opinions of the State Council on Solving the Issues of Migrant Workers*, accessed December 23, 2016, http://www.gov.cn/zhuanti/2015-06/13/content_2878968.htm, Clause 6.

payment arrears were still frequent when the interview was undertaken. For instance, Hongxing participated in a project constructing a new office building for the Public Security Bureau of Changting County from 2011 to 2013. The project cost 69 million yuan in total, but the Public Security Bureau had only paid 18 million yuan, to date.¹⁶⁵ According to Hongxing, this project was way beyond its original budget, as the owner wanted to improve the design and size several times during the constructing process. Hongxing and his little boss went to the Public Security Bureau many times asking for money, but the officials bluntly claimed that Changting County was in financial difficulties, and had no money. Hongxing said, “We could say nothing but left. It is the Public Security Bureau! How can we do?” He was angry and challenged, “If they are short of funds, why built such a fancy building?”¹⁶⁶

According to Hongxing, this kind of dispute happens frequently, and working with government is very hard. Often, when a project relates to government agencies, migrant workers’ wages are defaulted upon. For instance, the Financial Bureau in Changting County was another debtor of Hongxing’s little boss, and the contractor above them. Hongxing believed it was safer to work with private developers, because of the wage-deposit system. In Hongxing’s words, “Now the government administrates this industry strictly and well, but the problem is the government itself. They are the major

¹⁶⁵ Changting County is a fake name, and numbers in this case are also changed a little bit.

¹⁶⁶ Juan Li, (February 5, 2015), Personal Interview.

owners in this industry. It would be better in those big cities, but in those small cities, you can do nothing about it.”¹⁶⁷

4.3.12 *Disappointed at Their Hometown – Hubei*

I had a hypothesis before conducting the fieldwork that migrant workers would have more power when dealing with labour disputes near to their hometowns, and would be in a weaker position when in host cities. However, the primary data suggests that the opposite is true. Many interviewees mentioned that they have more labour disputes in their hometown – Hubei. Many interviewees expressed disappointment toward their hometown. They used strong words to complain about the bureaucracy of local governments, and criticized the unsatisfying legal and economic environment in Hubei. Many of them had unpleasant experiences in their contacts with local authorities. Quite a few mentioned that authorities in other regions, especially in South China, were much more efficient than authorities in Hubei; the enterprises in other regions were more “formal” than local companies. In addition, people in other regions have higher “quality” than people of Hubei. Some, especially older generation migrant workers born in the 1950s and 1960s, had faith in the central government, and believed that China’s major problem was that local governments did not follow through on policies formulated by the central government. Although they had lots of complaints, they showed a deep

¹⁶⁷ *Ibid.*

understanding of the CPC and central government, and said it was very difficult to govern such a huge country. It is safe to assume that these unpleasant experiences and feelings in their hometown influence their legal culture.

For instance, Kai never had labour disputes outside of Hubei Province, but run into one in his hometown. He worked in a stone factory in Xiaochang County¹⁶⁸ in early 2014. The salary was 4,000 yuan per month, but the boss had not paid Kai from the beginning; instead, he wrote IOU notes to every worker, every month. After wage arrears of six months, some migrant workers fought back. They smashed the owner's office and complained to the local Labour Bureau, but these did not work. The owner said he had no money, which was true, and would pay the workers as soon as he could. Kai was not involved in these aggressive actions, because "I am very familiar with the owner, so I feel embarrassed to quarrel with him or to accuse him. The owner often calls me, and asks me to wait a while with a nice tone. What can I say?"¹⁶⁹

Jingming had three labour disputes from 2012 to 2014, all of which happened in Hubei. In two cases, the subcontractors ran away with money, and left workers unpaid. Jingming and his workmates appealed to many authorities at different levels, including the Labour Bureau, the Water Conservancy Bureau, the Public Security Bureau, and court, but none

¹⁶⁸ Xiaochang County is a county near to Shuangfeng Town.

¹⁶⁹ Juan Li, (January 18, 2015), Personal Interview.

of these efforts worked. In 2013, Jingming went to the local Labour Bureau, with two workmates, asking for help. The official told them that if they could find the subcontractor, he would help to settle the dispute. Jingming complained to me, “If I could get him (the subcontractor), I would beat him up, and force him to pay me back! I would settle the problem all by myself! Why I need you (the official of Labour Bureau)? It is buck-passing! He did not want to take any responsibility!” He also noted that, “Those officials were really good at talking. How can we argue with them? And it is so difficult to even see any official. There are security guards and doorkeepers in their buildings. They won’t let us in in many cases.” By the end, Jingming concluded, “It is useless to go to those authorities!”¹⁷⁰ Their unpleasant experiences in their hometown greatly contribute to their negative attitude of the formal labour dispute resolution system.

4.4 Summary

As for migrant construction workers in China, in most cases, labour disputes simply refer to wage defaults, and they never expect any other kind of labour rights. Unfortunately, thanks to the “efficient” multi-tier subcontracting system, the construction industry is the hardest-hit area in China with respect to wage arrears. There are too many situations where migrant workers at the bottom of the industry ladder are losing their salaries. What is worse, there is a well-accepted “custom” in Xiaogan area that workers normally are

¹⁷⁰ Juan Li, (February 13, 2015), Personal Interview.

paid when the project is completed, or at the end of the lunar year. The long-term payment schedule significantly increases the risk and amount of wage default in the construction industry.

There is clear consensus among interviewees that wage defaults have occurred far less frequently in recent years. Most interviewees believe the major reason for this change is improved policies. Since the beginning of 2000s, the central and local governments of China have tried to improve administration over the construction industry, and to better protect migrant workers' interests. It is doubtless that many causes, including booming economy, increased income in rural areas, preferred policies in agricultural section, growing labour shortage, new labour policies and regulations, as well as new media openness, all work together to make these changes in the construction industry.

In theory, the new Labour Dispute Mediation and Arbitration Law in China establish a more efficient and effective dispute resolution system, compared with older regulations; however, in reality, the formal legal procedure remains ineffective and unfriendly to migrant workers. Hence, arbitration and legal trials are not an option for migrant construction workers, no matter whether in host cities or hometowns. They do not consider the formal legal procedure as an option. The traditional culture of valuing harmony, and despising litigation, prevent the migrant workers from pursuing lawsuits. Hence, migrant construction workers' dispute resolution primarily remains conservative

and informal, and sometimes quite violent.

The nature of labour disputes in the construction industry combines reactive and proactive, defensive and offensive strategies. Although migrant construction workers endure terrible working conditions, and seldom demand rights beyond wages, they are in fact more aggressive and offensive than they were in previous decades. Workers normally take proactive actions by carefully selecting bosses. They adopt different strategies and means when dealing with labour disputes in their hometown than in host cities. In their hometown, wage defaults simply become personal debt disputes between two rural residents, rather than labour disputes between employees and employers. Hence the dispute is disorganized and individual. Migrant workers often try to resolve the problem using ethical pleas and appeals to their familial relationship. However when bosses refuse to pay after several attempts at negotiation, migrant workers would become increasingly violent.

In host cities, and when the boss is an “outsider,” migrant workers can be quite offensive from the beginning. They are relatively more organized and unified, and may choose more “modern” means in order to attract attention from the local government, including complaining to the Labour Bureau, calling 110, and parading or demonstrating in front of construction companies and local government. It is interesting to find that migrant workers do not always adhere to the unwritten rule of their autonomous system when in

host cities. They may choose to go directly to the general constructor asking for wages, if necessary. They are aware of the social, political and legal changes in China. In fact, they are quite sophisticated and practical, and always choose the best strategy to resolve their disputes according to the situation. It is notable that the rural youth in Shuangfeng Town are more aggressive and violent than the older generation migrant workers. They learn from their experiences, and believe that violence and confrontation is the best way to resolve problems. They use violent action as strategy to attract attention from authorities.

The primary data illustrates that the ethic among family and clan members, as well as the pressure of establishing a good reputation in the construction industry, is surprisingly powerful, and much more effective than law or contracts. In most cases, bosses try every means possible to pay workers' wages on time, even taking the risk of borrowing from usurers. This is likely the most important reason why migrant construction workers in Xiaogan choose to stay in their autonomous system, and only work for Xiaogan bosses. However, sometimes even subcontractors' best efforts leave them unable to fulfill their duties, and they may choose to disappear, and never return to their homes. As for rural residents, who care much about their clan and family relationship, the cost is too high.

Most interviewees believe that the best way, if it is not the only way, to get their wages back, is to get help from the government. Due to various economic contexts and cultural differences in different areas of China, migrant construction workers have varied

experiences in different cities. Problems are relatively easier to settle in the big and coastal cities; for inland and less developed areas, it is more difficult, and sometimes, the local authorities are even the debtors. Most interviewees remain unsatisfied with the legal environment in their hometown, Hubei Province. Compared with the government agencies in Beijing and Guangdong, authorities in Hubei seem less effective and more bureaucratic with regard to labour disputes. It is safe to assume that the lack of satisfaction with the legal environment in Hubei, and unpleasant experiences in their hometown, also is one of the main reasons that migrant construction workers do not have faith in law and the formal legal system in China. Although they are unsatisfied with the local governments in Hubei, complaining to the governmental agencies still remains the third option when dealing with their labour disputes, right after ethical pleas and violence.

Chapter 5 Trade Unions

5.1 Introduction

There is a consensus among scholars that labour disputes result from a lack of clear regulations on power granted to management over employment relations, while trade unions cannot offer genuine representation and collective bargaining power.¹ Chinese trade unions are often criticized for their weakness in representing workers' rights, and their dependency on the regime and management. Due to the different historical narratives, Chinese trade unions are fundamentally different from Westerns unions. They have double institutional identities, as both a regime-management apparatus and a labour organization, and the former identity is the priority.² They seldom represent workers' rights, but rather act mainly as a state instrument and management branch. Hence, from the point of view of the international trade union community, the continued subordination of Chinese trade unions to Communist Party of China (CPC) disqualifies them from being considered as bona fide trade unions.³

¹ Aaron Halegua, "Getting Paid: Processing the Labour Disputes of China's Migrant Workers," *Berkeley Journal of International Law* 26.1 (2008): 254; Jie Shen, *Labour Disputes and Their Resolution in China* (Oxford: Chandos, 2007); Daniel Z. Ding and Malcolm Warner, "Re-inventing China's Industrial Relations at Enterprise Level: An Empirical Field-Study in Four Major Cities," *Industrial Relations Journal* 30.3 (1990): 243.

² Feng Chen, "Between the State and Labour: the Conflict of Chinese Trade Unions' Double Identity in Market Reform," *The China Quarterly* 176 (2003): 1006.

³ *Ibid*; Simon Clarke and Tim Pringle, "Can Party-Led Trade Unions Represent Their Members?" *Post-Communist Economies* 21.1 (March 2009): 85.

A trade union is always a product of its history, and the Chinese trade unions are no different.⁴ Their current functions and importance can only be understood in the context and development of the broader Chinese labour movement. All China Federation of Trade Unions (ACFTU), as the only legal trade union in China, was established in 1925, and was directly supervised by the CPC from the beginning.⁵ The ACFTU's present status, self-image, and power reflect their role in these revolutions, regressions, and reversals.⁶

In the past three decades, industrial relations in China have changed significantly. Accordingly, Chinese trade unions find their double identities becoming increasingly contradictory.⁷ They are in a dilemma between the dependency on the Party-state and management, on one hand, and representing members' rights, on the other. As such, Chinese trade unions have to re-position themselves in the dramatic transition process, while their historical development will continue to influence their future roles in the changes still sweeping China.⁸ This chapter explores Chinese trade unions' structures and

⁴ Malcolm Warner, "Labour-Management Relations in the People's Republic of China: the Role of the Trade Unions," *International Journal of Human Resource Management* 91.2 (1991): 205; Yunchao Zhu, "Workers, Unions and the State: Migrant Workers in China's Labour-intensive Foreign Enterprises," *Development and Change* 35.5 (2004): 1011.

⁵ CPC's United Front Work Department, accessed December 29, 2016, <https://www.thechinastory.org/yearbooks/yearbook-2014/forum-begging-to-differ/the-united-front-in-an-age-of-shared-destiny/>; Tony Saich, *The Origins of the First United front in China: The Role of Sneevliet (alias maring)* (New York; Leiden, 1990).

⁶ Wingyue Leung, "Smashing the Iron Rice-Pot: Workers and Unions in China's Market Socialism," *Asia Monitor Resource Center*, Hong Kong (1988).

⁷ Chen, *supra* n. 2.

⁸ Wingyue Leung, *supra* n. 6.

functions in a planned economy, their dilemma in market economic reform, and their changes and reforms in the transition era based on literature review. It also demonstrates migrant construction workers' ideas, opinions, and attitudes with regard to trade unions, based on primary data collected from the interviews with all the participants of this study.

5.2 Background

According to Sidney Webb and Beatrice Webb, a trade union “is a continuous association of wage earners for the purpose of maintaining or improving the conditions of their employment.”⁹ The Australian Bureau of Statistics states that a trade union is “an organization consisting predominantly of employees, the principal activities of which include the negotiation of rates of pay and conditions of employment for its members.”¹⁰ Compared with these well accepted definitions of a trade union, Chinese trade unions clearly do not fall within this category. Their current functions and framework can only be understood in the context of labour movements in China.¹¹ The ACFTU was set up in 1925, and directly supervised by the CPC from the very beginning. It has evolved in the immense social upheavals that shaped modern China. ACFTU greatly contributed to the formation of the People’s Republic of China (PRC).¹² Its historical development related

⁹ Sidney Webb and Beatrice Webb, *History of Trade Unionism* (New York: A.M. Kelley, 1965), 1.

¹⁰ Australian Bureau of Statistics, “*Trade Union Census*,” accessed January 21 2016, <http://www.abs.gov.au/AUSSTATS/abs@.nsf/0/9FCBBF538897395ACA2570EC001A6CED?OpenDocument>.

¹¹ Warner, *supra* n. 4.

¹² *Ibid*; Saich, *supra* n. 5.

closely to the development of CPC. This still influences Chinese Unionism in modern times.¹³

5.2.1 Chinese Trade Unions' Structure and Roles

In its relations with workers, the command economy was supported by a set of bodies led by CPC, and the ACFTU was one of them. According to *Trade Union Law* of PRC,¹⁴ the ACFTU's main purpose is to assist the government to reach its objectives in terms of economic development;¹⁵ subsequently, working on behalf of employees in disputes is a less significant purpose. Traditionally, in socialist regimes, unions' mandates are to be a "conveyor belt," linking employees to the regime.¹⁶ Similarly, the ACFTU has a monopoly in working on behalf of Chinese employees; all other organizations have been prohibited. The role of Chinese trade unions remains "a quasi-governmental social organization with multiple functions."¹⁷

However, the ACFTU has its own institutional agenda, aiming to increase its impacts while fulfilling its formal duty of representing workers in order to minimize conflict

¹³ Wingyue Leung, *supra* n. 6.

¹⁴ Trade Union Law of PRC (2001), http://www.npc.gov.cn/wxzl/gongbao/2001-10/29/content_5277078.htm.

¹⁵ *Ibid*, Clause 7.

¹⁶ Thomas F. Remington and Xiaowen Cui, "The Impact of the 2008 Labour Contract Law on Labour Disputes in China," *Journal of East Asian Studies* 15 (2015): 271.

¹⁷ Ronald C. Brown, *Understanding Labour and Employment Law in China* (Cambridge: Cambridge University Press, 2010), 44.

between workers and the regime.¹⁸ A former president of the ACFTU, Ni Zhifu, articulated the significance of the ACFTU being autonomous from the state.¹⁹ Twice in the latter half of the 20th century, the Chinese trade unions attempted to expend their autonomy.²⁰ However, the primary effort led to its own destruction at the time of the Cultural Revolution; and the second attempt ended by the end of 1980s.²¹ Then the government became harsher, which negated any potential for trade unions to become autonomous, and it forced the ACFTU to return to the government's control.²²

According to *Trade Unions Law* of PRC, trade unions in China are defined as “working class mass organizations led by CPC and formed voluntarily by workers and staff members.”²³ This definition clearly indicates the Chinese trade unions’ double institutional identity as both Party-state apparatus and labour organization. The slogan of ACFTU which can be found on the front page of its website also evidently shows this dual institutional identity: “Absolute Allegiance to the Party’s Cause; Serve Workers and

¹⁸ Remington and Cui, *supra* n. 16.

¹⁹ Xinhua News, July 25, 1989, cited in Sek Hong Ng and Malcolm Warner, *China’s Trade Unions and Management* (London: St. Martin’s Press and New York: Macmillan Press, 1998), 55.

²⁰ Tim Pringle and Simon Clarke, *The Challenge of Transition: Trade Unions in Russia, China and Vietnam* (New York: Palgrave Macmillan, 2011), 86-87.

²¹ Thomas F. Remington and Xiaowen Cui, “The Impact of the 2008 Labour Contract Law on Labour Disputes in China,” *Journal of East Asian Studies* 15 (2015): 271.

²² Bill Taylor, Kai Chang, and Qi Li, *Industrial Relations in China* (Cheltenham: Edward Elgar, 2003), Chapter II; Gordon White, “Chinese Trade Unions in the Transition from Socialism: towards Corporatism or Civil Society?” *British Journal of Industrial Relations* 34:3 (1996): 433; Jeanne L. Wilson, “The Polish Lesson: China and Poland 1989-1990,” *Studies in Comparative Communism* 23. 3-4 (1990): 259.

²³ Trade Unions Law of the PRC (2001), available at: <http://www.people.com.cn/GB/shizheng/8198/29614/29642/2071559.html>, Clause 2.

People Wholeheartedly.”²⁴ Before the market economic reform, there is no obvious conflict between the Chinese unions’ double identities. Their role of speaking for workers was “absorbed” by the paternalist state.²⁵ It is often claimed that, in socialist countries, workers and the state have “common interests,” and the Communist Party is representative of the working class. Workers are not considered to have “independent” interests.²⁶ In socialist countries, trade unions nominally represent the interests of the entire working class, under the leadership of the Communist Party, and as such were an integral part of the Party-state apparatus.²⁷

The Socialist planned-economy system supports this claim. From 1949 to the late 1980s, SOEs dominated industrial production in China. The SOEs guarantee lifetime employment, and provide welfare from “cradle to grave” for urban industrial employees. This is the so-called “iron rice-bowl” (tie fan wan²⁸) system.²⁹ Under this system, Chinese trade unions need not “fight for” their members’ rights and welfare. Instead, they serve as a bureaucratic part of the government-controlled industrial system.³⁰ According

²⁴ ACFTU, accessed March 24 2016, <http://www.acftu.org/template/10041/index.jsp>.

²⁵ Chen, *supra* n. 2.

²⁶ Warner, *supra* n. 4; Daniel Z Ding, Keith Goodall and Malcolm Warner, “The Impact of Economic Reform on the Role of Trade Unions in Chinese Enterprises,” *The International Journal of Human Resource Management* 13.3 (2002): 431.

²⁷ Clarke and Pringle, *supra* n. 3.

²⁸ 铁饭碗..

²⁹ Hong Yung Lee, “Xiangang, the Chinese Style of Laying-Off Workers,” *Asian Survey* 40:6 (2000): 914.

³⁰ Malcolm Warner, “Chinese Trade Unions: Structure and Function in a Decade of Economic Reform: 1979–1989,” in *Organized Labour in the Asia-Pacific Region: a Comparative Study of Trade Unionism in Nine Countries*, ed. Stephen Frenkel (Ithaca, NY: ILR Press. 1993), 49.

to Clarke and Pringle, communist unions had no legitimate role in the relationship between workers and employers because the stipulations of employment were set by the regime. Rather, their role was to support labour obedience, stimulate ambition, and provide benefits.³¹

Overall, the function of the Chinese unions is to harmonize the relationship between members and their employers rather than fighting for the rights of the members.³² According to the *Trade Unions Law* of 2001, the ACFTU has a series of 19 tasks for which it is responsible. These include: 1) to organize and educate workers to exercise their democratic rights to play the role as masters of the country, in accordance with Constitution and the law;³³ 2) to assist the people's government, and safeguard the people's democratic dictatorship, led by the working class and based on the alliance of workers and peasants;³⁴ 3) to protect the legitimate rights and interests of workers, while maintaining the overall interests of the nation and all the people;³⁵ 4) to coordinate labour relations through equal consultation and a collective contract system;³⁶ 5) to organize workers to participate in democratic decision-making and management, in supervision the staff and workers' Congress, in accordance with the law;³⁷ 6) to closely

³¹ Clarke and Pringle, *supra* n. 3

³² Clarke and Pringle, *supra* n. 3.

³³ Trade Unions Law of the PRC (2001), Clause 5.

³⁴ *Ibid*, Clause 5.

³⁵ *Ibid*, Clause 6.

³⁶ *Ibid*, Clause 6.

³⁷ *Ibid*, Clause 6.

contact with staff and workers, listen to and reflect their views and demands, care about them, and help them to solve difficulties;³⁸ 7) to mobilize and organize workers to actively participate in economic development, and to strive to complete production tasks, and to educate workers to constantly improve their ideological, moral, technics and discipline;³⁹ 8) to seek redress and to protect the rights of workers, if the enterprise or institution violates the system of Workers' Congress and other democratic management systems;⁴⁰ 9) to help and guide the staff and workers to sign labour contracts with the enterprises and the institutions, and to negotiate with the enterprise and institutions on behalf of the staff and workers;⁴¹ 10) to help workers with labour dispute resolution procedures;⁴² 11) to require a re-decision when the trade union believes that the enterprise or institution has illegally terminated a labour contract with staff or a worker;⁴³ 12) to require the enterprise or institution to stop and correct violations on workers' rights, and to appeal to local government if the enterprise or institution refuse to change;⁴⁴ 13) to provide opinions on working conditions, safety, and health facilities;⁴⁵ 14) to provide suggestions on risky operations, potential hazards, and accidents;⁴⁶ 15) to investigate violations of workers' rights, and occupational injuries and hazards, with the relevant

³⁸ *Ibid*, Clause 6.

³⁹ *Ibid*, Clause 7.

⁴⁰ *Ibid*, Clause 19.

⁴¹ *Ibid*, Clause 20.

⁴² *Ibid*, Clause 20.

⁴³ *Ibid*, Clause 21.

⁴⁴ *Ibid*, Clause 22.

⁴⁵ *Ibid*, Clause 23.

⁴⁶ *Ibid*, Clause 24.

organizations offering assistance;⁴⁷ 16) to participate in labour dispute mediation and arbitration;⁴⁸ 17) to provide legal assistance for staff and workers;⁴⁹ 18) to assist enterprises and institutions to take care of the collective welfare of workers and staff members;⁵⁰ 19) to be involved in the policy-making process regarding policies related to important rights and workers' and staff interest, including employment, wages, industry security, social insurance, etc.⁵¹ It is clear that most of these functions, when workers and the state have common interests, have been carried out, or at least are attempted to be carried out.

The structure of Chinese trade unions has remained approximately the same since 1949, although there has been a significant growth of membership as urbanization has driven large amount of migrant workers into cities.⁵² The ACFTU has been organized along vertical lines, and retains a parallel structure of “center-province-municipal- -district” level, reflecting the center-province-municipal-district level of government administration (See Figure 5.1).⁵³ Each union branch is double-led by its upper union and the Party Secretary at the same level.⁵⁴

⁴⁷ *Ibid*, Clause 25, and Clause 26.

⁴⁸ *Ibid*, Clause 28.

⁴⁹ *Ibid*, Clause 29.

⁵⁰ *Ibid*, Clause 30.

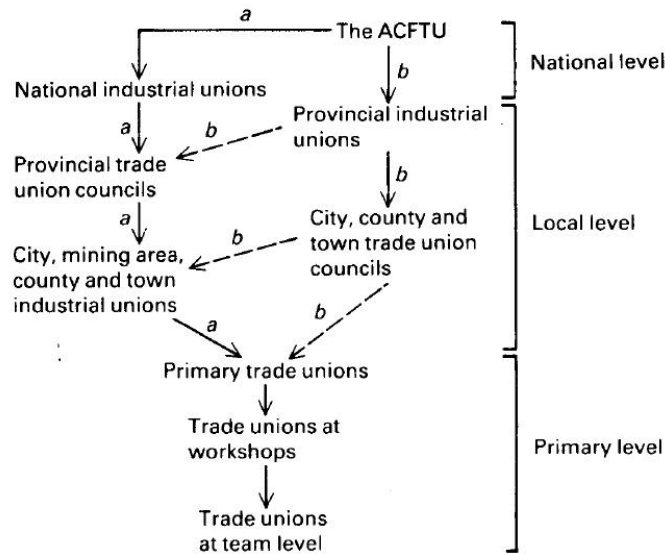
⁵¹ *Ibid*, Clause 33.

⁵² Warner, *supra* n. 4; Zhu, *supra* n. 4.

⁵³ *Ibid*.

⁵⁴ ACFTU, <http://www.acftu.org/>; Warner, *supra* n. 29.

Figure 5.1: Reconstruction of the ACFTU after 1949⁵⁵



Source: Lee, 1986: 47

Figure 1 Reconstruction of the ACFTU after 1949

Within SOEs, trade unions play a dependent role. The Party Secretary plays a central role in SOEs, and it is responsible to “guarantee and supervise” policy implementation.⁵⁶ The CPC is concerned about the ACFTU’s organizational capabilities, and worries that trade unions might become focus of workers’ mobilization. Thus, the Party regime establishes another institution for representing workers at each enterprise, the Workers’ Congress, and the trade union acts as the Workers’ Congress executive committee.⁵⁷ The Workers’ Congress is considered as the nominal basic form of democratic management. According

⁵⁵ Warner, *supra* n. 4.

⁵⁶ Andrew G. Walder, “Factory and Manager in an Era of Reform,” *The China Quarterly* 118 (June 1989): 242.

⁵⁷ Clarke and Pringle, *supra* n. 20, 86-87.

to the *Regulation of Workers' Congress of the State-Owned Enterprises*, the Workers' Congress is meant to be the organization through which labourers can manage enterprises democratically.⁵⁸ Clause 4 of the *Regulation* states that the Workers' Congress is directly led by the Party Committee at enterprise level, and is in charge of executing the Party's policy, handling the interests among the state, enterprises, and labourers.⁵⁹ Clause 4 also claims that the Workers' Congress shall actively support the management and fulfilling the production command.⁶⁰ According to *Corporate Law* in China, the corporate board shall listen to the Workers' Congress' advice on major reform and management issues.⁶¹ However, the Worker' Congress's legal power is always made a mere figurehead by the management.⁶² In this context, the trade unions' main duty at a micro level is to help the Party Secretary and management to encourage workers to boost productivity.⁶³ (See Figure 5.2)

Figure 5.2: A Simplified Diagram of the Decision-Making Structure of SOE in China⁶⁴

⁵⁸ *Regulation of Workers' Congress of the State-Owned Enterprises* (1986), <http://fgk.chinalaw.gov.cn/article/xzfg/198107/19810700267984.shtml>.

⁵⁹ *Ibid*, Clause 4.

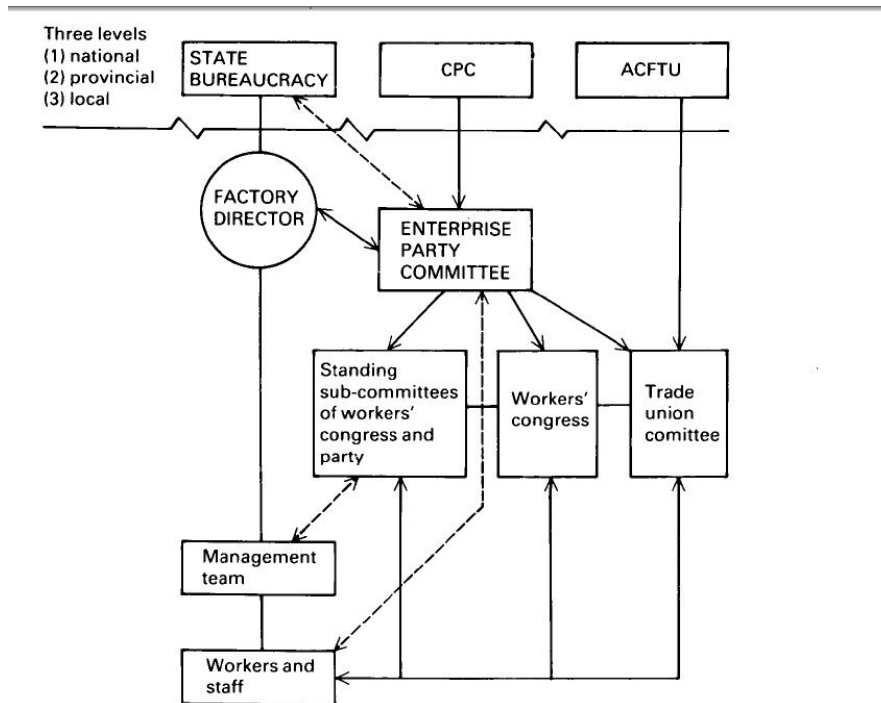
⁶⁰ *Ibid*, Clause 6.

⁶¹ Corporate Law of PRC, <http://www.scio.gov.cn/xwfbh/xwfbh/wqfbh/2014/20140826/xgzc31415/Document/1378620/1378620.htm>, Clause 18.

⁶² Cherie Jiuhua Zhu, *Human Resource Management in China, Past, Current and Future HR Practices in the Industrial Sector* (Oxon, RoutledgeCurzon, 2005).

⁶³ Chen, *supra* n. 2.

⁶⁴ John S. Henley and Mee Kau Nya, "Introducing Market Forces into Managerial Decision-Making in



Notes: -----> indicates hierarchical command relationship
 <-----> indicates reciprocal or consultative relationship
 - - - -> indicates links of a weak or unclear nature

5.2.2 Chinese Trade Unions' Dilemma

From the late 1980s, the market economic reform has fundamentally changed industrial relations in China. The evolution from a planned economy into a market economy has altered the milieu wherein trade unions function.⁶⁵ The “iron rice-bowl” system has been broken; as a result, tens of millions of workers have been terminated from SOEs. The unitary state-dominated ownership system was broken by diversified ownership forms, including foreign, joint venture and private.⁶⁶ Furthermore, the workforce is increasingly

Chinese Industrial Enterprises,” *Journal of Management Studies* 23.6 (November 1986): 635.

⁶⁵ Clarke and Pringle, *supra* n. 3.

⁶⁶ Yongshun Cai, *State and Laid-off Workers in Reform China. The Silence and Collective Action of the*

diverse. Millions of migrant workers have moved from less developed provinces into the more developed coastal areas. “Contract” workers and “temporary” workers have become the majority of workforce, instead of “permanent” workers who represented the majority before the reform.⁶⁷ In theory, this transition removed the enterprise from direct control from the government, and hence trade unions ceased to be regime agent at least in the workplace.⁶⁸ Hence, Chinese trade unions find their double identities becoming increasingly contradictory, especially in the labour retrenchment in SOEs.⁶⁹

The economic reform has ended harmonious employment relations, and workers have become more vulnerable and marginalized than at any time since 1949.⁷⁰ Labour disputes have been on sharp rise, and industrial conflicts have become more violent and collective.⁷¹ Some scholars even call China “an emerging epicenter of world labour unrest,”⁷² or “undeniably the epicenter of global labour unrest.”⁷³ The surge in labour disputes is considered by the regime in China as the “biggest threat to social stability”

Retrenched (Oxon: Routledge, 2006); Zhu, *supra* n. 61.

⁶⁷ Zhu, *supra* n. 61.

⁶⁸ Clarke and Pringle, *supra* n. 3.

⁶⁹ Chen, *supra* n. 2.

⁷⁰ Ching Kwan Lee, *Against the Law: Labour Protests in China's Rustbelt and Sunbelt* (University of California Press, 2007); Ching Kwan Lee and Yonghong Zhang, “The Power of Instability: The Microfoundations of Bargained Authoritarianism in China,” *American Journal of Sociology* 118.6 (2013): 1475.

⁷¹ Shen, *supra* n. 1; Lee, *ibid*.

⁷² Beverly J. Silver and Lu Zhang, “China as an Emerging Epicenter of World Labour Unrest,” *China and Transformation of Global Capitalism*, ed. in Ho-Fung Huang (New York: RoutledgeCurzon, 2004), 50-66.

⁷³ Eli Friedman, “China in Revolt,” *Jacobin*, 7/8, January 29th, 2014, accessed October 12, 2015, <http://jacobinmag.com/2012/08/china-in-revolt/>.

and its own rule.⁷⁴ Lack of genuine representation from trade unions is often regarded as one of the main courses of dramatically growing labour protests.⁷⁵

In the labour protests, the conflicts between workers and the state have put the ACFTU in the middle of its two identities. Should the Chinese trade unions continue their dependent role as a regime and management apparatus, or should they seek more autonomy to represent their members' rights and interests, following the Western labour unions? It seems they can do neither. If Chinese trade unions continually act only as an integral part of the bureaucracy, and seldom protect members' rights and interests, workers will lose interest. Membership was unimportant for the ACFTU before economic reform, because in SOEs permanent workers automatically became union members, and membership fees were deducted from salaries;⁷⁶ however, in the market economy, membership has become the foundation of the unions' existence. On the other hand, the CPC also expects the ACFTU to assume more responsibilities around establishing a harmonious society, and in releasing the tension between workers and the regime.⁷⁷ If the ACFTU cannot help to achieve this goal, it might also fall from grace with the Party-state.

Likewise, the union officials often found themselves in a vague situation. Since the local

⁷⁴ Shen, *supra* n. 1; Remington and Cui, *supra* n. 16.

⁷⁵ Halebua, *supra* n. 1; Shen, *supra* n. 1; Remington and Cui, *supra* n. 21.

⁷⁶ Warner, *supra* n. 29, 49.

⁷⁷ Warner, *supra* n. 4.

party committee appoints primary trade union cadres, unions are indebted to the local administration.⁷⁸ At the enterprise level, those who are running the union always rely upon administration for their wages, other forms of remuneration, and even their employment. Especially in independent companies, the higher-level union jobs are amalgamated with administrative positions.⁷⁹ It is also common in private companies for the spouse of a firm's owner to be the chairperson of the trade union.⁸⁰ Hence, workers often regard the union as an organization that benefits the employer more so than it benefits the employees.⁸¹

Unions also aim to maintain or increase their institutional power. For instance, they attempt to expand the number of union branches in private companies and participating in tripartite collective bargaining commissions. As Lu *et al* explain, enterprises with trade union branches have greater efficiency, and more workers are protected by labour contracts and social insurance benefits.⁸² Unions are tightly associated with the government, and employers also use trade unions as channels of communication with local authorities. This intermediate position helps to understand that unions are hesitant to assert their autonomy and become confrontational with employers to benefit the

⁷⁸ Pringle and Clarke, *supra* n. 20, 35-39

⁷⁹ Tim Pringle, *Trade Unions in China: The Challenge of Labour Unrest* (London: Routledge, 2011), 110.

⁸⁰ Mingwei Liu and Chunyun Li, "The Puzzle of Strong Union Effects on Workers in China," *Rutgers University School of Management and Labour Relations* (2014).

⁸¹ Remington and Cui, *supra* n. 21.

⁸² Yi Lu, Zhigang Tao, and Yijiang Wang, "Union Effects on Performance and Employment Relations: Evidence from China," *China Economic Review* 21 (2010): 202-210

employees.⁸³

If the Chinese trade unions choose to actually represent and protect their members' collective rights, even against the Party-state when necessary, they might find themselves in big trouble. Currently, most labour protests in China possess three common features: spontaneous, unorganized, and economic-demand oriented.⁸⁴ The last thing the CPC wants to see is organized labour movements, given the working-class-revolutionary history of CPC itself. The regime believes that this will prevent economic growth and weaken China's competitiveness in the global market. What is worse, this poses a serious threat both to social and political stability, and even the ruling role of CPC.⁸⁵ Therefore, labour issues are quite sensitive in China. The CPC carefully avoids using terms like "fire," "unemployment," or "labour unrest," instead calling them "Xia Gang" (step down from positions), "Dai Ye" (waiting for jobs), and "Ji Ti Shang Fang" (collective appeals).⁸⁶ Given this scenario, how could the ACFTU represent the collective workers' interests against the Party-state?

⁸³ Remington and Cui, *supra* n. 21.

⁸⁴ Raymond W.K. Lau, "China: Labour Reform and the Challenge Facing the Working Class," *Capital and Class* 61 (1997): 45.

⁸⁵ Grace O. M. Lee and Malcolm Warner, "The Management of Human Resources in Shanghai, a Case Study of Policy Responses to Employment and Unemployment in the People's Republic of China," in *China's Business Reforms: Institutional Challenges in a Globalized Economy*, eds. Russell Smyth, On Kit Tam, Malcolm Warner and Cherrie Jiuhua Zhu (New York: Routledge Curzon, 2005), 125.

⁸⁶ Lau, *supra* n. 83; Lee, *supra* n. 28.

Moreover, the ACFTU was established and assimilated into the organizational structure and traditional institutions. It is barely possible that Chinese trade unions would represent workers' grievances, and organize or support workers' protests.⁸⁷ The ongoing relegation of unions by management inhibits them from reorganizing.⁸⁸ The 85 years of dependent history, the close relationship with the Party-state, the integral institutions, the overlap in personnel, the tight control from the regime, and the economic pressure from the local authorities, together, mean that Chinese trade unions would not and could not merely represent collective workers' interests and rights, following their western contemporaries.

Therefore, in disputes between the government and workers, for instance during the labour protests in SOE's restructuring, trade unions always appear more like a state instrument, and attempt to prevent or stop labour unrests. Sometimes they simply disappear when disputes happen. In the most positive cases, they serve as mediators among employers, workers, and government agencies, as opposed to being a voice of the worker.⁸⁹ At times, representatives of unions have shown up at mediation sessions to represent the companies.⁹⁰ The trade unions' refusal of representation has raised hostile responses among workers. According to Chen's case study in Shanghai, for instance, angry workers beat up a union cadre who came to the protest site, and tried to stop them

⁸⁷ Clarke and Pringle, *supra* n. 3.

⁸⁸ *Ibid.*

⁸⁹ Feng Chen, "Trade Unions and the Quadripartite Interactions in Strike Settlement in China," *China Quarterly* 201 (2010): 104.

⁹⁰ See Chen, *supra* n. 2.

and ask them to leave.⁹¹ Meanwhile, in many labour protests which are organized by migrant workers, the trade unions always are evidently on the side of local government. For instance, according to Chan, in a large-scale strike at a huge shoe factory in Guangdong Province, the local government, the trade union, and the police joined forces to suppress the strikers.⁹² Workers are extremely disappointed at unions, and many workers have abandoned unions. They claimed that “it is useless to turn to unions.” Some workers even illegally started underground trade unions to organize labour actions.⁹³

5.2.3 Chinese Trade Unions’ Reforms and Transitions

As China’s union monopoly, the ACFTU has some advantages that the Western trade unions do not. It is strongly supported by all levels of government, and it already has tremendous membership and subsidiaries. According to the latest official statistics, there have been more than 2.8 million members in more than 2.75 million primary trade unions, and the number of migrant worker members was 109 million by June 2013. There are 2.75 million grassroots trade unions, covering 6.38 million enterprises.⁹⁴ The ACFTU is doubtless the largest trade union in the world in terms of membership. The scale can help the ACFTU better achieve its goals.

⁹¹ *Ibid.*

⁹² Anita Chan, “China’s Migrant Workers’ Legal Rights Awareness on the Rise,” *International Union Rights* 22 (2015).

⁹³ Chen, *supra* n. 2.

⁹⁴ ACFTU, “The Members of ACFTU is over 280 million,” October 14, 2013, accessed June 8, 2015, <http://acftu.people.com.cn/n/2013/1011/c67502-23166574.html>.

According to Clarke and Pringle, the relegation of the ACFTU to the Party did not indicate that unions would become a tool of the government.⁹⁵ In the mid-1950s, the ACFTU attempted to show its autonomy. Subsequent effort was made forty years later, as a result of the effects of economic reform, inflation and increasing wildcat strikes and protests.⁹⁶ The unions were aware that in this new market economy, they must better represent the independent interests of employees.⁹⁷ In October 1988, the ACFTU Congress demanded “drastic changes,” such as expanded autonomy for unions to prevent illegal worker organizations. The former president of ACFTU, Ni Zhifu, noted in 1989 that rather than being a branch of the government, unions ought to perform autonomously to entice employees to quash the rise of “independent trade unions.”⁹⁸

For over three decades, the ACFTU has gradually been integrated into the policy decision-making field. In 1988, Ni Zhifu proclaimed that the ACFTU would participant the decision-making field at all levels, and suggest in reform policies in certain areas, including prices, wages, housing, working conditions, and social welfare.⁹⁹ The ACFTU also petitioned for processes to safeguard employees’ interests, and fostered its position in

⁹⁵ Clarke and Pringle, *supra* n. 3.

⁹⁶ Jude Howell, “Trade Unionism in China: Sinking or Swimming,” *Journal of Communist Studies and Transition Politics* 19. 1 (2003): 102.

⁹⁷ Clarke and Pringle, *supra* n. 3.

⁹⁸ Xinhua News, July 25 1989, cited in Sek Hong Ng and Malcolm Warner, *supra* n. 19.

⁹⁹ White, *supra* n. 86.

discussions about legislative and policy reform.¹⁰⁰ It vehemently supported the regulation of labour relations, lobbied against regulations based on individual contracts that the Ministry of Labour favoured as well as the stipulation for communal agreements that was built in the 2001 Trade Union Law.¹⁰¹ Wei Jianxing was Chairman of the ACFTU from 1993 to 2003, and through half this time, he was also a prominent associate of the CPC Politburo; this provided him with the ability to promote the ACFTU's views to the Ministry of Labour. As a result, the ACFTU maintains an effective role in its efforts to lobby for different labour legislations.¹⁰² As Wharton highlights, the ACFTU had dozens of conferences with the Ministry of Labour and Social Security, the Legislative Office of the State Council, and the Legislative and Law Commissions of the NPC; in addition, it proposed more than a hundred suggestions to the Standing Committee that were implemented in the forthcoming law.¹⁰³ Jichen Liu, legal work minister of the union, declared that enduring and unchanging working associations would inspire effective effort and enhance commerce.¹⁰⁴

¹⁰⁰ Anita Chan, "Revolution or Corporatism? Workers and Trade Unions in Post-Mao China," *The Australian Journal of Chinese Affairs* 29 (1993): 31.

¹⁰¹ Suzanna Ogden, "China's Developing Civil Society: Interest Groups, Trade Unions and Associational Pluralism," in *Changing Workplace Relations in the Chinese Economy*, ed. Malcolm Warner (New York: Palgrave Macmillan, 2000), 263; Simon Clarke, "Post-Socialist Trade Unions: China and Russia," *Industrial Relations Journal* 36. 1 (2005): 2.

¹⁰² Clarke and Pringle, *supra* n. 3.

¹⁰³ Wharton, "Despite Good Intentions, China's New Labour Law Leaves as Many Issues Unresolved as it Addresses," (2007) accessed on April 4 2016

<http://www.knowledgeatwharton.com.cn/index.cfm?fa=viewfeatureandarticleid=1685andlanguageid=1>.

¹⁰⁴ Richard B. Freeman, and Xiaoying Li, "How Does China's New Labour Contract Law Affect Floating Workers?" *National Bureau of Economic Research Working Paper Series* 19253 (2013).

In the legislative process of developing the three new labour laws starting in 2005, the ACFTU joined the discussion surrounding the Labour Contract Law following the proposal of the original draft; subsequently, it vigorously contributed to the modification process.¹⁰⁵ Moreover, the ACFTU used public debate about the regulation in order to enhance collective contracts and multilateral bargaining conventions.¹⁰⁶ According to Clause 20 of *Trade Union Law of PRC*, the trade unions shall, on behalf of employees, negotiate with the enterprise and organizations equally and sign collective labour contracts. The script of the contract will then be presented to and proved by the workers' Congress or by employees.¹⁰⁷ The unions won wider acknowledgement of collective contracts, and their position in implementing collective contracts. However, the law evaded the trade unions' exclusive rights to represent employees by providing the Workers' Congress the right to approve collective contracts.¹⁰⁸

However, some literature explores that a significant intention of the new Labour Contract Law was to settle labour grievances individually and in a non- confrontational manner.¹⁰⁹

The regime's noticeable penchant to avoid collective agreements is apparent in the

¹⁰⁵ Mary Gallagher and Baohua Dong, "Legislating Harmony: Labour Law Reform in Contemporary China," in *From Iron-Rice Bowl to Informalization: Markets, Workers and the State in a Changing China*, eds. Kuruvilla, Lee and Gallagher (New York: Cornell University Press, 2011).

¹⁰⁶ Pringle, *supra* n 78.

¹⁰⁷ Trade Union Law of PRC (2001), Clause 20.

¹⁰⁸ Remington and Cui, *supra* n. 21.

¹⁰⁹ Remington and Cui, *supra* n. 9; Lee and Zhang, *supra* n. 69.

Labour Contract Law.¹¹⁰ In practice, collective contracts may be signed on a territorial or industrial basis, or both.¹¹¹ They normally are broad framework, listing minimum standards for payment and employment circumstances.¹¹² The regime avoided providing political independence to collective mechanisms, such as trade unions and employers' associations.¹¹³ In short, the new law fervently favours disputes being settled individually; it also slightly enhances the current privileges of the unions in group negotiations that become collective contracts.¹¹⁴

According to White, the Chinese trade unions achieved limited influence over policy making and legislation, at the cost of sacrificing autonomy. They sought superior operational independence alone with an intimate relationship with the regime.¹¹⁵ Clarke contends that the Chinese trade unions are strongly controlled by the regime and the employers who use a "carrot-and-stick" approach to maintaining unions in their traditional roles.¹¹⁶ Chen also highlights that the unions' political role depends on how much autonomy the regime is willing to grant them. At present, the Party-state vigorously

¹¹⁰ Labour Contract Law, Clause 51.

¹¹¹ Labour Contract Law, Clause 53.

¹¹² Tim Pringle, *supra* n. 78, 117-122.

¹¹³ Remington and Cui, *supra* n. 9.

¹¹⁴ Mary E. Gallagher, "China's Workers Movements and the End of the Rapid-Growth Era," *Daedalus* 143: 2 (2014), 81-95; Mingwei Liu, "Conflict Resolution in China," in *The Oxford Handbook of Conflict Management in Organizations*, eds. William K. Roche, Paul Teague, and Alexander J. S. Colvin (Oxford, UK: Oxford University Press, 2014), 488-513; Remington and Cui, *supra* n. 21.

¹¹⁵ White, *supra* n. 86.

¹¹⁶ Simon Clarke, *supra* n. 101.

holds onto its unyielding domination of unions, due to both political and economic imperatives.¹¹⁷ Clarke and Pringle note that the ACFTU would be able to easily represent employees' privileges through customary channels and techniques, lobbying for preferred policies and laws, and depending upon government organizations.¹¹⁸ Biddulph also *et al.* highlight that the ACFTU is indeed controlled by the state, but there are sometimes indications that some parts of the union bureaucracy are more active in worker protection than others.¹¹⁹ Estlund explores the recent reform efforts focusing on reshaping some features of the ACFTU. The main reform proposals call for democratic elections of union officers at the enterprise level and a more robust framework for collective negotiations. Estlund argues that these democratizing reforms would represent major steps forward for China's workers; yet they face serious challenges, because these efforts challenge the traditional functions of the ACFTU.¹²⁰

Compared with trade unions at national and provincial levels, the function of the grass-roots trade unions seems more changed, especially in the non-state-owned enterprises. The trade unions at bottom level are more willing to fight for workers' rights against employers in non-state-owned enterprises, especially in joint-venture and foreign-invested companies. In reviewing a case study of Xin in 2005, trade unions in

¹¹⁷ Chen, *supra* n. 2.

¹¹⁸ Clarke and Pringle, *supra* n. 3.

¹¹⁹ Sarah Biddulph, Sean Cooney, and Ying Zhu. *Law and Fair Work in China*. London: Routledge, 2012.

¹²⁰ Estlund, Cynthia. *A New Deal for China's Workers*. Harvard Up: Cambridge Ma, 2017.

joint-venture and foreign-investment enterprises actually have actually had some positive impact on protecting workers' rights. They have workers' welfare as their primary goal, and democracy as a secondary goal. However, even in joint-venture companies, trade unions are still not independent organizations. The most significant feature of these unions is the high degree of overlap between the cadres in the Party Secretary, Worker Congress, and the trade unions. Through this overlap, the CPC can extend its leadership and influence into joint-venture companies.¹²¹ However, even at grass-roots level, the extent to which trade unions can represent workers' rights also depends on the local governments' policies. Like some other countries in South East Asia, China is seeking rapid economic development under authoritarian control. Reducing the power of workers is the most essential strategy to attract investors' interests.¹²² Some local governments do not support the trade unions in their advocacy of workers' rights and interests. Some local authorities have even proposed "no union" agreements to entice foreign investment.¹²³

The economic reform and dramatic social changes in China have created both challenges and opportunities for the ACFTU. In the context of an increasingly diverse workforce and complex industrial relations, both the regime and workers need trade unions to assume more legal duties. On one hand, the regime needs trade unions to unify labour movements,

¹²¹ Tong Xin, "Labour Unions in Enterprises. Proactive Actors, Taking the Operation of the Labour Union at B Corporation, a Sino-Foreign Joint Venture in Beijing, as an Example," *Chinese Sociology and Anthropology* 37:4 (2005): 52.

¹²² Chen, *supra* n. 2; White, *supra* n. 86.

¹²³ Chen, *ibid*; White, *ibid*.

to release the intense tension between the Party-state and workers, and to help establish harmonious industrial relations in the emerging market economy.¹²⁴ On the other hand, the vulnerable working class also needs trade unions to advocate and protect their rights.

Some literature suggests that Chinese trade unions have played a more active function in labour disputes recently. For instance, Chen notes that they serve a mediating function in labour disputes and strikes, based on a case study in Dalian. Chen illustrates the non-judicial process of labour dispute resolution in China is mostly a progression of quadripartite interaction. Along with the regime and proprietors, both unions and employees are part of this process. Workers' collective actions are typically initiated by groups of unorganized employees who are angry about their plight; while unions' work is to resolve such events peacefully. The regime, naturally, plays the main role in this quadripartite process; trade unions mediate among employees and the regime and also among employees and proprietors. They are the key players of the non-judicial process of labour dispute resolution.¹²⁵ Chen highlights that Chinese trade unions' capability to mediate is because of their governmental status which gives them necessary authority and resources. The dual institutional identity of unions places them in a unique position, enables them to communicate with and influence all other parties involved in labour

¹²⁴ Ding, Goodall and Warner, *supra* n. 25; Clarke and Pringle, *supra* n. 3

¹²⁵ Chen, *supra* n. 89.

disputes.¹²⁶

Clarke and Pringle also argue the higher-level trade union bodies have endeavoured to offer supports for unions at lower level to enhance their capability and skills as representatives. For instance, higher-level unions have become a party in labour disputes to diminish the workplace unions from depending too much on management. The higher level trade unions also help the workplace trade unions by offering legal guidance as they are negotiating collective contracts.¹²⁷ In some provinces, trade unions sustain frequent training programs for union officials. In 2006, over a quarter million union officials undertook compulsory education, while over half a million took part in optional courses.¹²⁸

In recent years, increasing labour unrests occurred, seeking to hold democratic elections to replace the management-controlled union.¹²⁹ The direct election of union leaders is considered as a method to enhance responsiveness of unions at enterprise level. The issue has been controversial in China, and there have been some experiments with the election of trade union leaders in enterprises.¹³⁰

¹²⁶ *Ibid*; Chen, *supra* n. 2.

¹²⁷ Clarke and Pringle, *supra* n. 3.

¹²⁸ ACFTU, “*Work Statistics of the Chinese Trade Unions in 2006*,” (Beijing: ACFTU, 2007), accessed March 3, 2016, <http://www.acftu.org.cn/template/10002/file.jsp?cid/%68andaid/%239>.

¹²⁹ Chan, *supra* n. 92.

¹³⁰ Jude A. Howell, “ACFTU: Beyond Reform? The Slow March of Direct Elections,” *China Quarterly* (December 2008): 845.

Considering the difficulty in establishing workplace trade unions in new private enterprises, especially in minor enterprises, the ACFTU make additional efforts to develop sector and/or local union organizations, hopeful that these can conclude collective arrangements covering all enterprises within this area.¹³¹ The ACFTU has also built up its own network of workforce committees at diverse levels to supervise and inspect. The organization's report indicates that almost 25 percent of companies had "labour protection supervision and examination committees;" there were 1.621 million inspectors to safeguard employment in 2006, which was able to take care of two fifths of all Chinese workers. Trade unions as a whole partook in 2.301 million safety assessments in the same calendar years.¹³² However, according to Clarke and Pringle, such bodies were impotent to force positive change in workplace without support of related government departments.¹³³

5.2.4 Concentrated Recruiting Migrant Workers Campaign

In recent years, the ACFTU has paid increased attention to the new workplace power: migrant workers. The ACFTU congress in 2003 declared that migrant workers would be considered part of the working class, and would be eligible for trade union

¹³¹ Simon Clarke, Chang-Hee Lee and Qi Li, "Collective Consultation and Industrial Relations in China," *British Journal of Industrial Relations* 42.3 (2004): 235.

¹³² ACFTU, *supra* n. 127.

¹³³ Clarke and Pringle, *supra* n. 3.

membership.¹³⁴ Starting in April 2015, the ACFTU launched an ambitious recruitment campaign for migrant workers, and issued a document named “The Implementation Plan of Concentrated Recruiting Migrant Workers Campaign,” to trade union bodies at all levels. The document stipulates that from April to December 2015, trade unions at all levels would focus on the key sectors and areas, including the provincial development zones, industrial parks, construction projects, logistics industry, domestic service, and agricultural cooperative organizations, in order to attract migrant workers into the trade union. As such, membership of migrant workers in the trade union increased significantly by the end of 2015.¹³⁵

The major aspects and goals of the “Concentrated Recruiting Migrant Workers Campaign” include the following: establishing trade union organizations in all of the provincial development zones and industrial parks across the country, with these local trade unions representing a major channel of recruiting migrant workers. It specifically requires setting up formal project trade unions in every construction project of over 20,000 square meters, and building alliances of the project trade unions in order to achieve effective coverage for the small construction projects. It further requires that trade unions at a provincial level should build their own database of the key sectors, areas,

¹³⁴ *Ibid.*

¹³⁵ Workers Daily, “ACFTU Launches ‘Concentrative Recruiting Migrant Workers Campaign’ (Quanzong Kaizhan Nongmingong Jizhong Ruhui Xingdong),” April 16, 2015, accessed March 15, 2016, <http://acftu.people.com.cn/n/2015/0416/c67560-26854243.html>.

projects, and companies, in order to get a clear picture of the main targets of members in their provinces. It calls on the trade unions at provincial level to explore the effective measures to attract migrant workers, strengthen the dynamic management of migrant workers' membership, and make it possible that migrant workers' membership could be transferred to other local trade union branches if they move.¹³⁶

In this campaign, many local trade unions take creative and effective measures to attract migrant workers to become union members. For instance, according to newspaper article, a migrant worker Youqun Li, who was working in the Yushan Town, Pengshui County of Chongqing Municipality, received Webchat texts from the trade union of Pengshui County. These texts introduced the *Labour Law*, the *Trade Union Law*, the *Constitution of the ACFTU*, and called migrant workers to join the trade unions. Li said, as a migrant worker, he was not familiar with the trade union. He stated, "I just knew that there were so many benefits of being a union member from those texts." Now he also shares some useful information from the trade union in his own Webchat Friends Circle, which is like Facebook in China. "I wish my co-villagers all know more about the benefits of joining the trade unions." Migrant workers can also fill in and submit membership applications through mobile phones. This news suggests that the Party Committee of Pengshui County paid great attention on the "Concentrated Recruiting for Migrant Workers Campaign," and required the County General Union to adopt more creative and effective measures to

¹³⁶ *Ibid.*

attract migrant workers.¹³⁷

So far, although there are no official statistics of how many migrant workers have been recruited by this campaign national wide, some reports illustrate impressive results in different regions. For instance, in Pengshui County, Chongqing Municipality, there were 49 new trade union branches established, with 10,294 migrant workers becoming new union members as of January 2016.¹³⁸ According to a report in *Fushun Daily*, there were 70,039 migrant workers working in Fushan City, Liaoning Province, and 69,787 migrant workers joined the trade unions by November 2015. The rate of union members in all the migrant workers reached 99.6 percent, and “over-fulfilled the task of the Provincial General Trade Union.”¹³⁹ A report in the *Worker Daily* claims that migrant workers who are working in Handan City, Hebei Province, are glad to have joined the trade unions. It states that membership of migrant workers in Handan City reached 1.3 million by August 2015, 58 percent of the total membership of Handan General Trade Unions. This report further indicates that trade unions at all levels of Handan City genuinely serve in their members, and provide a “ten benefits package” for new migrant worker members, including membership general benefits, professional training, serious-illness medical

¹³⁷ Chongqing Daily, “Implementing the Concentrative Recruiting Migrant Workers Campaign’ (Shishi ‘Nongmingong Jizhong Ruhui Xingdong’),” January 13, 2016, accessed March 15, 2016, <http://news.163.com/16/0113/05/BD6FN3E700014AED.html>.

¹³⁸ *Ibid.*

¹³⁹ Fushun Daily, “City General Trade Union Implements Actively, the Concentrative Recruiting Migrant Workers Campaign (Shi Zong Gonghui Jiji Tuijin, Nongmingong Jizhong Ruhui Xingdong),” December 25, 2015, accessed March 15, 2016, http://edu.gmw.cn/newspaper/2015-12/25/content_110400857.htm.

care benefit, support for children's education, and discount on gym memberships, among other benefits.¹⁴⁰ According to these newspaper articles, it seems that the ACFTU has made great progress in recruiting migrant worker, and providing services for its members, since April 2015. However, the official data in China is not always reliable, and can only describe part of the story. How would the ACFTU genuinely service its members, and to what extent would the Chinese trade unions represent and protect the collective migrant workers' interests in future remain questionable, and requires further examination.

5.3 Migrant Construction Workers' Legal Culture Regarding Trade Unions

Although a great deal literature has paid attention to the Chinese trade unions, little has explored migrant workers' legal culture, with regard to trade unions. Even fewer studies explore migrant construction workers' ideas, opinions, and attitudes with regard to trade unions. Although some literature has investigated trade unions' role in labour disputes amidst the economic reform, few studies have demonstrated Chinese trade unions' role and function in the construction industry labour disputes. Based on primary data collected from fieldwork and formal interviews with 34 migrant construction workers, who were all original residents of Shuangfeng Mountain Resort, in Central China, this chapter

¹⁴⁰ Fuxing Chen, "The Concentrative Recruiting Migrant Workers Campaign. Handan, Migrant Workers Response Actively (Nongmingong Jizhong Ruhui Xingdong, Handan, Nongmingong Ruhui Ting Jiji)," *Worker Daily*, August 5, 2015, accessed March 15th, 2016, <http://news.sina.com.cn/o/2015-08-05/061032174625.shtml>.

explores migrant construction workers' legal culture regarding Chinese trade unions.

5.3.1 *What is That? - The Major Attitude to Trade Unions*

According to primary data, migrant construction workers are not the target of trade union membership at all levels, although the ACFTU has called on local trade unions to pay more attention to migrant workers in workplace for some time.¹⁴¹ Among the 34 interviewees, none had any contact with any trade union or its personnel, let alone had been recruited by one. Moreover, 11 interviewees told me that they never heard about a trade union, and asked me, “What is that?”

It is noticeable that among the 9 interviewees who were born after 1985, only 2 of had ever heard about a “trade union,” and neither of those have had any contact with any union organizations. Among the rural youth born after 1985, the rate of “never heard about ‘trade unions’” is 77.8 percent, which is surprisingly high. Meanwhile, this rate is lower among the remaining 25 interviewees who were born before 1985. In fact, of this group, only 6 respondents claimed they had never heard of “trade unions,” 25 percent of the samples born before 1985. This difference may indicate that the Chinese trade unions played a more important role previously, during the traditional planned economy. Even as a Party-state apparatus and management branch, they are at least visible; however, they

¹⁴¹ ACFTU, “The Members of ACFTU is over 280 million,” October 14, 2013, <http://acftu.people.com.cn/n/2013/1011/c67502-23166574.html>. Accessed September 3, 2016,

became nearly invisible during the market economic reform, especially from migrant workers' perspective. For instance, Chutian, born in 1953, told me, "Trade union? Yes, I heard about it. There were trade unions a long time ago, from the beginning of the CPC leadership. But those are for the workers, not for our farmers, neither for our migrant workers."¹⁴²

Unfortunately, even those who had heard about "trade unions" barely knew anything about them. Often, the only thing they knew was the title. For instance, Zhiliang, who was born in 1981, and working as a small subcontractor, claimed that he heard about trade unions. Then he thought for a while, and asked me, "I had dinners with some members of Hubei Chamber of Commerce in Xinjiang. Are those the same?" As in Chinese, trade union is "Gonghui," which can be directly translated as "workers' association," while the chamber of commerce is "Shanghui," which can be translated as "business association."¹⁴³ Clearly, Zhiliang confused these two terms, and one can assume he knows little about trade unions beyond the title.

When responding to whether they knew anything about trade unions, respondents answers were unified that they had no contacts with trade unions. Most of the interviewees could offer nothing more on the topic. When answering questions of "labour

¹⁴² Juan Li, (January 6, 2015), Personal Interview.

¹⁴³ In Chinese, trade union is "工会"; while the chamber of commerce is "商会".

disputes,” all of the migrant workers have a lot of stories and feelings to share, and showed strong emotions. However, when answering questions of “trade unions,” they were mostly indifferent. Many were uninterested with this topic, and the expressions on their faces clearly demonstrated they did not consider trade unions relevant. As Hongliang, who was born in 1965, and primarily worked in Beijing, said, “Those formal and big companies have trade unions. But it is none of our business. They don’t care about us, and we don’t know what they are doing.”¹⁴⁴

Only three interviewees really knew something more about “trade unions” than their name. For instance, Aiguo explained that he used to work for the Fifth Construction Group of Hubei, and he heard there was a trade union in their company. But when I asked whether he had been contacted by the trade union, Aiguo responded without hesitation, “No, never. The trade unions were in the company’s base, and we were working in the site. It was far away from the base. We never went to the base, and the trade unions never came to us.” Then I asked whether Aiguo knew the functions of the trade unions, Aiguo thought for a while, and said uncertainly, “They seem to do some security training, right?” I kept asking, “Do you think that the trade unions can help and represent workers to negotiate with the bosses, and protect workers’ interests?” Aiguo responded in astonishment, “That is impossible! That is the **company’s** trade union! They are together.” “Do you mean that the trade unions are like a management branch?” “Yes, you

¹⁴⁴ Juan Li, (December 28, 2014), Personal Interview.

are right. They are the official organizations.”¹⁴⁵ In fact, Aiguo used the term “Guanfang Jigou” which literally means bureaucratic organizations.¹⁴⁶

The other two interviewees who knew something about trade unions were Guohui and Jinyun. Both had primarily worked as site managers in recent years. Guohui, born in 1964, worked for a construction company in Dongguan City, Guangdong Province, for two years. He worked as a site manager, signed labour contracts with this company, and received his salary in full on a monthly base. Different from the other migrant construction workers who were regarded as temporary labour, and paid on yearly base, Guohui was a formal employee of this company. However, he was still not the target of the trade unions. He said, “The company in Dongguan has a trade union. But they never contacted with me. We worked on project sites, and they were in the company base. The trade union had nothing to do with us.”

Jinyun, born in 1961, one of the three high school graduates, also primarily worked as a site manager in Huizhou City, Guangdong Province. He said this construction company in Huizhou was very formal. It signed labour contracts with Jinyun, and even provided social and medical insurance. Perhaps due to his higher level of education, or perhaps because of his work experiences as a manager, Jinyun had more understandings of trade

¹⁴⁵ Juan Li, (February 1·2015), Personal Interview.

¹⁴⁶ Guanfang Jigou, “官方机构.”

unions than the other interviewees. He said, “I heard about trade union. The company in Huizhou had one. But they never came to contact with me. It is only an artificial division, and can do nothing.” I asked him, “Then do you know the trade unions’ functions?” He mentioned, “They are supposed to help workers! They should help workers when they have difficulties and problems! But in fact, they didn’t fulfill any of these. They are only ornaments. The only function of them is their existence. When there is a trade union, and there is a chairman of the trade union, that’s enough!” I asked, “Did this trade union attempt to recruit you or any of the employees around you to be their members, by any means?” Jinyun seemed a little bit impatient because of my slow understanding; “You don’t understand yet. Trade union is only an official division of the company. As far as it exists, that’s enough. **There is no so-called ‘member’ at all!** ”

5.3.2 Invisible – The Trade Unions’ Role in Labour Disputes

Some literature highlights that Chinese trade unions play a more active role in labour disputes. However, based on the primary data collected during fieldwork, trade unions are largely invisible in labour disputes in the construction industry, at least from the perspective of migrant construction workers. Neither as the workers’ representative, nor as a mediator between workers and government, have trade unions simply disappeared from the picture in labour disputes in the construction industry. All of the 34 interviewees shared plenty of experiences and stories of labour disputes with me, but the term of “trade

unions” was not mentioned even once.

According to the fieldwork of this study, there are two kinds of labour disputes in the construction industry, one is the “on-site dispute,” and the other is the “back-to-hometown dispute” which is the more common kind. As long as the migrant construction workers come back to their hometown, their ambiguous identity completely turns back to “peasants,” and the wage default disputes simply become personal debt disputes between two rural residents, rather than labour disputes between employees and employers. As such, there is no role for “trade unions” of this kind in “back-to-hometown disputes.” Migrant construction workers’ resolution for this kind of dispute primarily remains conservative and informal, by using ethical pleas and family relationship to put pressure on the immediate subcontractors.

Compared to back-to-hometown debt disputes, the on-site disputes in the construction industry are more organized. The migrant workers may choose more “modern” means to settle labour disputes in host cities, for instance, blocking the entrance of the site, cutting off electricity and water, appealing to Labour Bureau, calling 110, attracting attention from mass media, and parading or demonstrating in front of the local government. Some scholars observe that the labour disputes in China are always organized by “informal”

worker leaders,¹⁴⁷ but in most of on-site labour disputes in the construction industry, the organizers normally are the immediate subcontractors. As in many cases we discussed in Chapter 4, these subcontractors organize the migrant workers to take aggressive actions to attract attention from mass media, public, and local governments, hence to put pressure on general contractors and to force them to pay. In fact, the majority of “on-site disputes” fall in this category, while the trade unions are also invisible in this category.

Among the experiences and stories of disputes that I heard during my fieldwork, only one labour dispute happened in Yingkou City, Liaoning Province. Xiaohua explained a situation of a dispute, which was organized by informal work leaders, with Xiaohua himself being one of those leaders. Theoretically, trade unions could play a role in this kind of “on-site” labour dispute as one player in the “quadripartite process.” They could play a mediating role between workers, government, and employers. However, in the case of Yingkou, trade unions are still missing – not only the trade unions at enterprises level, but also the “bureaucratic unions” at higher levels. It is safe to assume that trade unions are total invisible from the migrant workers’ perspective. They would never go to trade unions for representation, nor would they go to trade unions for help or support. While, workers normally go to other government apparatus for help and support in labour disputes, including the Public Security Bureau and Labour Bureau.

¹⁴⁷ Chen, *supra* n. 89.

It is noticeable that the Labour Bureau was often mentioned in migrant workers' narratives. Workers clearly have more faith in Labour Bureaus, comparing with trade unions. In many cases, the Labour Bureaus help migrant workers to resolve disputes with employers. Their identity as governmental apparatus gives them enough authority and resources for dispute settlement. The functions and features of the trade unions as an important player in the "quadripartite process" of labour disputes, is replaced by Labour Bureaus.

In short, in the construction industry, trade unions are totally invisible and unnecessary from workers' perspective, and their dual institutional identity becomes merely government apparatus. In this way, it lost the necessity of its existence, at least in the construction industry. It would be simply ornamental, being substituted by informal unions or other workers' associations on one hand, and being replaced by Labour Bureaus or other pure governmental bodies on the other hand.

5.3.3 Association of Co-villagers

If the trade union should be defined as "a continuous association of wage earners for the purpose of maintaining or improving the conditions of their employment,"¹⁴⁸ or as "an organization consisting predominantly of employees, the principal activities of which

¹⁴⁸ Sidney Webb and Beatrice Webb, *History of Trade Unionism* (New York: A.M. Kelley, 1965), 1.

include the negotiation of rates of pay and conditions of employment for its members,”¹⁴⁹ the associations of Xiaogan migrant construction workers, especially the associations of co-villagers are more appropriately called labour unions than the ACFTU.

The natural association of co-villagers makes it possible that all migrant construction workers know the wages of the industry. It allows them to make the best decision when choosing jobs, and it also provides more job opportunities. This association of co-villagers also provides collective bargaining power for Xiaogan migrant construction workers across China. Thanks to the famous reputation of Xiaogan people in this industry, especially of Xiaogan plasterers, the co-villagers’ association could provide strong support and bargaining power for members. In some cases, when a project has a short deadline or high-quality requirements, a group of Xiaogan plasterers could serve as bosses, because Xiaogan plasterers are well known for their good techniques and skills, and this co-villagers association could call on many skilled plasterers to join the project quickly, and guarantee to complete the task on time and with good quality. This advantage is irreplaceable in the construction industry. Many interviewees mentioned that when they were unsatisfied with their wages, or when bosses defaulted on their wages in Northeast, they simply stopped working all together, and threatened that they would leave. The unified action would put a lot of pressure on subcontractors, and in many cases the

¹⁴⁹ Australian Bureau of Statistics, “*Trade Union Census*,” accessed January 21, 2015, <http://www.abs.gov.au/AUSSTATS/abs@.nsf/0/9FCBBF538897395ACA2570EC001A6CED?OpenDocument>.

Xiaogan workers achieve their goal by this.

This association of co-villagers also can provide genuine representation for individual migrant workers in labour disputes. As explored before, the leader of the “on-site” labour protests is always the immediate subcontractors who also play as the representative of the migrant workers association of co-villagers when negotiating with the general contractors or subcontractors at higher tier. It is doubtless that the representation from subcontractors is more genuine than trade unions, because subcontractors have common interests with the migrant workers.

Unfortunately, this effective and powerful association of migrant construction workers is totally exclusive. Only original residents from the same country are eligible members for these associations. Typically, on a construction site, there are several associations of migrant workers that come from different regions. Migrant workers seldom have social lives outside of their own associations, and barely communicate with migrant workers from other regions. Different groups of migrant workers often fight with each other because of small conflicts. The other major limitation of this exclusive co-villagers association is limited in size. Normally there are, at most, several dozen migrant workers from same area working on a big construction site. The sense of membership exclusion also restricts their sizes, and these two limitations restrict their effect and influence.

5.4 Summary

There is a great deal of literature depicting how Chinese trade unions have made progress during China's economic reform, with many efforts and measures being undertaken to improve capability of representing collective workers' interests. However, the primary data of this study provides very negative findings. Basically, migrant construction workers are not the target of membership for the Chinese trade unions at all levels. Among the 34 interviewees, no trade unions had ever contacted them, by any means. It is astonishing that 77.8 percent of the young migrant workers born after 1985, and 25 percent of the migrant workers born before 1985, have never heard about trade union. Even those who had heard of the trade union barely know anything more than its title. All of the interviewees did not have many things to say on this topic. Due to the lack of genuine representation from labour unions, the association of co-villagers adopts the role of "unions" for migrant construction workers, and provides sincere representation and strong collective bargaining power through the national network established by Xiaogan people. Unfortunately, these effective and powerful labour associations have two major limitations that they are naturally exclusive and limited in size. These limitations restrict their effect and influence.

During labour disputes in the construction industry, Chinese trade unions are totally invisible, at least from the migrant construction workers' perspective. The trade unions

did not represent workers' collective interests, nor serve as a mediator between government, employers and workers. This calls into question their necessity: they have been substituted by the informal unions or other workers' associations on one hand, and been replaced by the Labour Bureaus or other governmental bodies in the other hand, as least in the construction industry.

Chapter 6 Conclusion

6.1 Introduction

Based on the pre-fieldwork and fieldwork taking place around two years in Hubei Province, a less-developed province in central China, as well as oral histories of 34 migrant construction workers from the same hometown, this study explored Xiaogan migrant construction workers' ideas, values, opinions, and attitudes, with regard to the legal system and legal reform in contemporary China. In particular, the study engages three essential aspects of employment relationship as three "Markers", namely labour contracts, labour dispute resolution, and trade unions. It elaborates the related legal and political changes related to migrant workers, the construction industry, labour contracts, labour dispute resolution, and trade unions, focusing mainly on three important regulations: Labour Contract Law, Labour Dispute Mediation and Arbitration Law, and Trade Union Law.

The study also elucidates Xiaogan migrant construction workers' experiences, thoughts, and feelings on the three "Markers," and uses the three Markers as an analytical lens to explore Xiaogan migrant construction workers' legal culture regarding their legal and political system, as well as their society. This study also shed light on the tensions between liberal legal norms imported from the West, and deeply embedded local values.

¹ It demonstrates that the imported Western legal norms, such as rule of law, rights, contract, litigation, and trade unions have, so far, only had limited influence on the popular legal culture of Chinese migrant construction workers; at the same time, traditional local values in China, such as the family ethic, morality, and harmony, still play a dominant role in their daily lives.

6.2 Perceptions on Rule of Law and Rights

At the end of each interview, I asked two groups of “theoretical” questions, one about “rule of law” and the other about “rights.” Although it is too ambitious to explore migrant construction workers’ legal culture on these two complicated topics in a short section, there were some interesting findings, worthy of note.

6.2.1 Law Has Nothing To Do With Us

My questions about “rule of law” normally included the following: “Do you think our society is ‘rule of law’ now?” “Do you think law is important?” And, “Is law important to you?” As discussed in Chapter 2, as an imported value, “rule of law” has not been supported from either traditional culture or the Party regime in China; hence, it is not surprising that migrant construction workers’ legal culture regarding “rule of law” are

¹ Pitman B. Potter, *China's Legal System*, (Cambridge, UK: Polity, 2013); Pitman B. Potter, “Legal Reform in China: Institutions, Culture, and Selective Adaptation,” *Law & Social Inquiry* 29. 2 (2004): 465.

quite negative. Most interviewees knew little about these “theoretical” questions, and did not have much to say. Some simply told me they had no idea, and most gave negative responses based on common sense and gut feelings. Among the 34 interviewees, only one thought that Chinese society was “sort of” based on rule of law; four believed that China was moving towards “rule of law” because of improved policies; the remaining interviewees thought that China was not based on the “rule of law.”

Guohui, born in 1964, primarily works as a site manager in Guangdong Province. He was the only person who thought that Chinese society was “sort of” based on rule of law. That said, he answered with uncertainty, “It is sort of (rule of law), I guess. Nowadays, if something happens in a construction site, the authorities will know about it. For example, if there is a security incident, the Administration Bureau of Work Safety will know about it immediately. They will demand you to stop operating, and correct the problem. Now the administration is quite strict. No-one can mess up.”² Clearly, Guohui’s working experiences in Guangdong Province where labour regulations are enforced more strictly contributes to Guohui’s opinion.

Four participants felt that China has been moving in the right direction, towards “rule of law,” due to recent government policies and regulations. Xiaohua, born in 1962, one of three high school graduates, stated, “It is not ‘rule of law’ now, but it is moving towards

² Juan Li, (December 23, 2014), Personal Interview.

the right direction in general. It's getting better.”³ Comparing with the experiences in the past, Xiaohua was satisfied with the positive policies nowadays. He concluded in our interview: “Our country is going forward, not backward!”⁴

The rest of the interviewees claimed they barely knew anything about “rule of law,” or stated that China was not based on “rule of law.” For instance, Jinshan, born in 1967, felt that, “‘Rule of law’ has nothing to do with me, because I never had contact with any judicial department.”⁵ Xinghua, born in 1970, believed that China was not “rule of law” and said, “Guanxi is the most important. If you have guanxi, you don’t need law; if you haven’t guanxi, law is useless.”⁶ It is notable that all the rural youth believed that China is not based on “rule of law.” For instance, Kai, born in 1990, answered excitedly, “No! It is not ‘rule of law’! Only those rich people have power, and only those powerful people have money. If you are rich, you can do anything and settle any trouble.”⁷ Youyuan, born in 1993, also argued that there was no rule of law, and that, “There are too many corrupt officials!”⁸

There were only three interviewees who believed that law was important: Guohui,

³ Juan Li, (February 8, 2015) Personal Interview.

⁴ *Ibid.*

⁵ Juan Li, (November 29, 2014), Personal Interview..

⁶ Juan Li, (January 4, 2015), Personal Interview..

⁷ Juan Li, (January 18, 2015), Personal Interview..

⁸ Juan Li, (January 17, 2015), Personal Interview.

Xiaohua, and Hongxing. All three respondents believed that China was currently based on “rule of law,” or moving towards “rule of law.” Xiaohua felt that, “Law is important of course. If the ‘three organizations’ of the Security, Procuratorate and Court don’t exist, where can we sue?” But when asked whether he had been involved in a lawsuit, he said, “I haven’t so far. But I must know there is somewhere that I could go to complain!”⁹ Hongxing and Guohui also claimed that law works everywhere nowadays.

The remaining interviewees all felt that law had nothing to do with them. For instance, Chutian, born in 1953, said, “Law has nothing to do with me, since I don’t break any law.”¹⁰ Dayong, born in 1978, also stated, “Law is not important to me at all. I had some disputes before, but I handled them my own way. We are all co-villagers, and any disputes can be settled peacefully. It is unnecessary to ‘tear’ anyone’s face. Resorting to legal procedures is totally unnecessary. We are co-villagers. We must consider our relationship.”¹¹ It is notable that none of the rural youth have faith in law, and their attitudes were even more desperate than their parents. For instance, Zhen, born in 1990, stated, “Law is useless! Money is more useful than law. If you don’t have money, you must dare to risk your life!”¹² Zhen also believed that violence is more useful than law, and he claimed that all his friends at his age believed so. Peng agreed with Zhen, and

⁹ Juan Li, (February 8, 2015), Personal Interview.

¹⁰ Juan Li, (January 6, 2015), Personal Interview.

¹¹ Juan Li, (September 29, 2014), Personal Interview.

¹² Juan Li, (September 29, 2014), Personal Interview.

believed that law is troublesome and useless. Wei, Bo, and Xiong all believed that law only mattered when they broke the law because of fighting, and the only function of law was to prevent them from making bigger mistakes, such as beating others too hard.

6.2.2 Only Officials and Rich People Have Quanli, We Don't Have Any

In Chinese, the pronunciation of “rights,” Quanli, can mean two things: “right,”¹³ and “power”¹⁴. They are different in writing, but same in pronunciation. In the interviews, I purposefully did not explain to which term I referred, in order to avoid possible misleading and misunderstanding. Hence, in this section, I use the term – “Quanli” to replace the terms of “rights” or “power.” My routine questions about “Quanli” normally included: “What is Quanli?” and “What Quanli do you have?” Obviously, most interviewees confused two terms. In most circumstances, they assumed “Quanli” meant “power,” though in a few cases they referred to “rights.”

Most interviewees provided straightforward and similar answers, “Only rich people have Quanli; only officials have Quanli; we migrant workers don't have any.” Quite a few participants added, “I only have Quanli in my family, over my children.” For instance, Xinghua, born in 1970, felt, “If you are rich, you have Quanli; no money, no Quanli. If

¹³ 权利.

¹⁴ 权力.

you are rich, a lot of people would come to kiss your ass. If you are poor, who cares about you?”¹⁵ Hongliang, born in 1965, also stated, “No money, no Quanli! Our migrant workers are at the bottom of the society, how can we have any Quanli?”¹⁶ The rural youth held the same negative opinions as the older generations. Kai, born in 1990, stated, “When you have money, you have Quanli; if you don’t have money, you have nothing. I only have Quanli over my son.” Bo, born in 1993, stated, “Quanli is to control others. I don’t have any Quanli.” It is safe to argue that in most cases, the interviewees assumed that “Quanli” referred to “power,” and it is possible they had no idea about “rights,” and what “rights” they have. Another case was Chutian, born in 1953, who stated, “Quanli is given by the people, and should be used to service the people. We migrant workers don’t have any Quanli.”¹⁷ Chutian’s idea about “Quanli” demonstrates the influences from Socialist ideology, and it still referred to “power.”

Only five interviewees had different opinions. Some of these can be regarded as evidence of rights awareness. For instance, Peng claimed, “I have some Quanli. I am strong, and I can work. This is my Quanli. If I think you are nice, I work for you; if I don’t like you, I won’t work for you. If I think you are really nice, I work really hard for you. This is my Quanli.”¹⁸ Both Hongxing and Guohui stated that everyone had Quanli, and anyone’s

¹⁵ Juan Li, (January 4, 2015), Personal Interview.

¹⁶ Juan Li, (December 28, 2014), Personal Interview.

¹⁷ Juan Li, (2015, January 6th), Personal Interview.

¹⁸ Juan Li, (2015, January 21st), Personal Interview.

Quanli must be within the scope of the law, and must be subject to law. Guohui further explained, “The boss has his Quanli, and I have mine. Workers also have their Quanli. If they want to take the job, they take; if they don’t want to, they can quit in any minute. Nobody can force others to do anything.”¹⁹ In these conversations, it is safe to assume that “Quanli” meant “rights.”

6.3 Migrant Construction Workers’ Legal Culture

6.3.1 Labour Contracts are Unimportant and Unnecessary

Most of the interviewees had never signed a labour contract. Considering the large number of construction projects in which each interviewee had participated, the rate of migrant workers covered by labour contracts in the construction industry is astonishingly low. Migrant construction workers’ attitudes towards labour contracts are also negative. Most interviewees believed that labour contracts are unimportant and unnecessary; some even considered them a restriction on workers, rather than providing protection. Even those who had signed labour contracts regarded them only as a compulsory procedure in “formal” companies. They never read the content, and did not keep a copy for themselves. As Zhao explained, “Those formal companies required the contract, and we don’t need it.”²⁰

¹⁹ Juan Li, (2014, December 23rd), Personal Interview.

²⁰ Juan Li, (January 7, 2015), Personal Interview.

Although labour contracts are rare in the construction industry, the primary data clearly indicates that migrant construction workers have used traditional methods to protect their interest, and to make their weak voices heard, through unification. They rely on their autonomous system built by thousands of hundreds of Xiaogan people who are actively working at all levels of the construction industry, across China. This autonomous system is surprisingly powerful. Most migrant construction workers only choose to work for Xiaogan bosses, because it is more reliable and easier to get payment. Xiaogan bosses also prefer to hire workers from their hometowns, because of mutual trust, and less financial pressures. The foundation and core of this autonomous system coheres around one of the strongest adhesives in traditional China: the family ethic and morality, rather than law, or rule of law.

Rather than “contract,” interviewees often used “deal” when talking about the relationship between migrant workers and their bosses. This oral “deal” within their autonomous system is surprisingly powerful. The workers work hard, and do not require their wages until the end of the lunar year; bosses take care of all of the workers’ costs and expenses, and always try their best to pay wages. To do so, they sometimes resort to borrowing at usurious interest rates. Both sides take their oral commitments seriously, and the mutual trust makes the autonomous system work.

6.3.2 *Labour Disputes Solutions are Conservative, Informal, and Violent*

As for migrant construction workers in China, in most cases, labour disputes simply refer to wage default. In fact, migrant construction workers never expect and demand any other form of labour rights. Unfortunately, thanks to the “efficient” multi-level subcontracting system, the construction industry is the hardest hit area of wage arrears in China. There are many instances where migrant workers, who are at the bottom of this industry ladder, lose their salaries. Ever since the beginning of 2000s, the central and local governments of China have tried to improve administration over the construction industry, to better protect migrant workers’ interest. All of the interviewees agreed that there have been fewer wage defaults in the past two decades. It is doubtless that many social and economic changes, including a booming economy, increased income in rural areas, preferred policies in agricultural section, growing labour shortage, new labour policies and regulations, as well as new media openness, have worked together to produce changes in the construction industry, and construction workers have more power to bargain with employers, and protect their rights.

In protecting their rights, migrant construction workers adopt different strategies when dealing with labour disputes in their hometowns and in the host cities. In their hometown, wage defaults simply become personal debt disputes between two rural residents, rather

than labour disputes between employees and employers. Hence, the dispute is disorganized and individual. Migrant workers often try to resolve the problem using ethical pleas and appeals to their familial relationship, and turn to violence if ethical pleas are ineffective. In the host cities, and when the boss is an “outsider,” migrant workers can be quite offensive and aggressive from the beginning. They are relatively more organized and unified than in their hometown, and may choose more “modern” means in order to attract attention from local government, including complaining to the Labour Bureau, calling 110, as well as parading or demonstrating in front of local government and construction companies. It is notable that the rural youth in Shuangfeng Town are more aggressive and violent than the older generation migrant workers. They believe that violence is the best way to resolve problems. Arbitration and legal trials are not even an option for these interviewees, because the formal legal procedure remains ineffective and unfriendly to migrant workers. In fact, they do not even bother to try to take their disputes to court.

Due to the variety of economic contexts and cultural differences in various areas of China, migrant construction workers have diverse experiences in different cities. Labour disputes are relatively easier to settle in big and coastal cities; for inland and less developed areas, it is much more difficult, and sometimes, local authorities are the debtors. Most interviewees are unsatisfied with the legal environment in their hometown, Hubei Province. Compared with government agencies in Beijing and Guangdong, authorities in

Hubei seem less effective and more bureaucratic in labour disputes. It is safe to assume that this lack of satisfaction with the legal environment of Hubei, and unpleasant experiences in their hometown, are one of the main reasons that migrant construction workers do not have faith in law or the formal legal system.

6.3.3 Trade Unions Are Invisible

Much literature has suggested that Chinese trade unions have made progress in recent decades, and efforts have been undertaken to improve their capability in representing collective workers' interests. Nevertheless, this study's results did not bode well for trade unions, at least in the construction industry, and from migrant workers' perspective. Obviously, migrant construction workers are not the primary membership targets for the Chinese trade unions. Among the 34 interviewees, none had ever been contacted by any trade union organization or personnel. In fact, most interviewees had never heard about trade unions. Those who had knew barely anything about trade union beyond its title. In labour disputes in the construction industry, the ACFTU is totally invisible. The unions do not represent the collective workers' interests, and do not play a role as mediator between employers, workers, and local governments. They are simply out of the picture. As a result, the official trade unions have been substituted by other informal workers' associations, on one hand, and by other government apparatuses, such as Labour Bureaus, on the other hand. Associations of co-villagers play the role of unifying migrant workers

in the construction industry, and provide representation and strong collective bargaining power for its members. Unfortunately, this powerful association has two major limitations: they are exclusive and limited in size. These limitations restrict their influence.

6.3.4 *The Main Influential Factors*

Based on the primary data, one can conclude that all of the interviewees from Shuangfeng Town tend to have similar perceptions of legal culture with respect to labour contract, labour disputes, and trade unions. The primary data suggests that age, education, position, and host cities, all have limited influence on migrant construction workers' legal culture.

There is no evidence to suggest that the new generation of migrant workers' has a significantly different legal culture from their parents, despite the dramatic social and economic changes in China since the economic reform starting in 1978. The young migrant workers do not have more awareness or faith in law than older migrant workers. They, in fact, are more violent and confrontational than their fathers. There are only some minor changes between the two generations: first, the young boys all hate being construction workers, because of the heavy workload and terrible working and living conditions, and wish to obtain better jobs in future. In contrast, their parents tend to be more satisfied with construction work, and seldom complain. Second, younger generation migrant workers have relatively more open attitudes toward working for "outsider" bosses, as long as payment terms are good. The older generation seldom feel this way,

and most stick to their autonomous system built by Xiaogan people in the construction industry, only working for Xiaogan bosses.

There is no concrete quantitative evidence to prove that education background and positions have significant influence on migrant workers' legal culture; however, some interviewees' experiences do indicate that better educational achievement helps migrant workers have better choices and opportunities. Better positions, such as site manager, could provide more security to migrant workers than ordinary labour jobs. The factor of one's host city has important effects on migrant workers' experiences, but has insignificant influence on their legal culture. The primary data suggest that migrant construction workers working in Beijing and Guangdong Province have more chances of signing labour contracts, especially in Beijing. Potentially, the regime concerns about maintaining stability, especially in its capital, is the main reason for this difference.

6.4 Summary

Amidst the chaos of the construction industry in contemporary China, Xiaogan migrant workers choose to rely on the traditional local values and means to protect their interests, against both capital and bureaucracy, and try to make their weak voices heard by unifying, rather than relying on the formal legal system and trade unions. They made these choices based on practical knowledge and sophisticated decisions. Compared to the formal legal

system, this autonomous system can reduce costs, provide convenience, and promote benefits to the greatest possible extent, in certain circumstances in the construction industry in China.

Most Xiaogan migrant construction workers believe that the law is useless, or the law is none of their business; in contrast, they regard family ethic and reputation within their autonomous system quite seriously. They do not believe that Chinese society is governed by “rule of law,” and claim that law has nothing to do with them. Most believe that something else, such as money, or power, or Guanxi, or violence, is more important and effective than law in China. It is notable that the rural youth have an even more negative attitude than older generations. In sum, imported Western legal norms, such as rule of law, rights, contract, litigation, arbitration, and trade unions have, so far, had limited influence on the popular legal culture of Chinese migrant workers, at least in the construction industry; while traditional local values— such as family ethic, morality, and harmony — still play a dominant role in daily life.

However, Xiaogan migrant construction workers do have significantly more power and confidence when bargaining with employers and protecting their own rights. It is doubtless that many factors, including the booming economy, increased income in rural areas, preferred policies in agricultural section, growing labour shortage, new labour policies and regulations, as well as new media openness, all work together to make these

changes possible in the construction industry. Migrant construction workers are not directly influenced by imported legal norms or a formal legal system; however, they do have more power because of the social, economic and legal changes in their society. They choose different strategies in different contexts. They choose to rely on family ethic to resolve their dispute in their hometown, and choose more formal and “modern” resolution means in host cities. This can also be considered as a kind of “selective adaption.”

6.5 Suggestions for Future Research

There are several limitations to this study because of limited funds and capacity. The two primary obstacles are the small sample size, and lack of female participants. As the study involved only 34 participants, the conclusions should be regarded as suggestive rather than definitive. More studies in this area, involving more respondents, and more regions, and in other industries, could make valuable contributions, by providing more concrete findings. Moreover, female migrant construction workers have played an increasingly important role in the construction industry. It was a pity that I could not get any female construction workers to participate in this study. Whether female migrant construction workers’ legal culture is different from male construction workers’ is worth further exploration.

Since the legal culture of the construction worker may differ from that of the migrant

workers in other industries, and there is also good chance that the Xiaogan migrant workers' legal culture varies from regions to regions, the legal culture of the migrant workers who are working in other industries and come from other areas is worthy of exploring in future. Some insightful comparisons can be made based on empirical studies. For instance, how is the legal culture of the construction workers different from the housekeepers'? How the legal culture of the Hubei's construction workers different from that of Guangxi's construction workers? What is the most influential factor that affects the legal culture of migrant workers, the structure and operation system in a certain industry, or the local and specific values of their hometown? The answers to these interesting questions would help to comprehend the legal culture of migrant workers in contemporary China.

Bibliography

- Abel, Richard L.. "Law as Lag: Inertia as a Social Theory of Law." *Michigan Law Review* 03 (1982).
- Abrams, Philip. *Historical Sociology*. Shepton Mallet: Open Books, 1982.
- ACFTU, accessed March 24 2016, <http://www.acftu.org/template/10041/index.jsp>.
- ACFTU, "*Work Statistics of the Chinese Trade Unions in 2006*," (Beijing: ACFTU, 2007), accessed March 3, 2016, <http://www.acftu.org.cn/template/10002/file.jsp?cid/468andaaid/4239>.
- ACFTU, "The Members of ACFTU is over 280 million," October 14, 2013. Accessed June 8, 2015, <http://acftu.people.com.cn/n/2013/1011/c67502-23166574.html>.
- ACFTU, "Research Report on the New Generation of Migrant Workers (Guanyu Xinchengdai Nongmingong Wenti de Yanjiu Baogao)." accessed May 21, 2016, <http://www.chinanews.com/gn/news/2010/06-21/2353233.shtml>.
- Almeida, Rita and Carneiro, Pedro. "Enforcement of Labour Regulation, Informal Labour, and Firm Performance." *World Bank Policy Research Working Paper* 3756 (2005).
- Arthurs, Harry. "Who's Afraid of Globalization? Reflections on the Future of Labour Law," in *Globalization and the Future of Labour Law*, edited by John D. R. Craig and S. Michael Lynk. Cambridge University Press, 2006.
- Australian Bureau of Statistics, "*Trade Union Census*." Accessed January 21, 2016, <http://www.abs.gov.au/AUSSTATS/abs@.nsf/0/9FCBBF538897395ACA2570EC001A6CED?OpenDocument>.
- Bai, Nansheng and Song, Hongyuan. *Return, or Stay in City? Research on Chinese Migrant Workers' Returning to rural areas (Huixiang, haishi jincheng? Zhongguo nongcun waichu laodongli huiliu yanjiu)*. Beijing, Chinese Finance Economic Press, 2002.
- Baldassar, Loretta; and Merla, Laura, *Transnational Families, Migration and the*

Circulation of Care: Understanding Mobility and Absence in Family Life. New York: Routledge, 2014.

Banks, Kevin. "The Impact of Globalization on Labour Standards, a Second Look at the Evidence," in *Labour Law in an Era of Globalization: Transformative Practices and Possibilities*, edited by Joanne Conaghan, Richard Michael Fischl, and Karl Klare. Oxford: Oxford University Press, 2002.

Barboza, David. "Labour Shortage in China May Lead to Trade Shift." *New York Times*, April 3 2006. Accessed September 26, 2015, <http://www.nytimes.com/2006/04/03/business/03labor.html?pagewanted=all>.

Becker, Jeffrey and Elfstrom, Manfred. "The Impact of China's Labour Contract Law on Workers." *International Labour Rights Forum* (May 12, 2010).

Beijing Migrant Workers Legal Aid Station, *Report on Cases Involving Migrant Workers' Unpaid Wages (Nongmingong qianxin anjian yanjiu baogao)* 2.3 (October 2006), accessed October 12, 2015, http://www.zgnmg.org/zhi/dybg/bg002_1.htm.

Besley, Timothy and Burgess, Robin. "Can Labour Regulations Hinder Economic Performance? Evidence from India." *The Quarterly Journal of Economics* 119 (2004): 91;

Betten, Lammy. *International Labour Law: Selected Issues*. Kluwer, Deventer, 1993.

Bi, Mingxin. "Young Migrants Settle for Life in the City." *China Daily*, February 26, 2008. Accessed June 6 2015, http://news.xinhuanet.com/english/2008-02/26/content_7671827.htm.

Bill, Taylor; Chang, Kai; and Li, Qin. *Industrial Relations in China*. Northampton, MA: Edward Elgar Publishing, 2003.

Bodde, Derk, Morris, Clarence and Chu Ch'ing-ch'i. *Law in Imperial China: exemplified by 190 Ch'ing Dynasty cases*. Cambridge: Harvard University Press, Mass, 1967.

Brendan Smith, Jeremy Brecher, and Tim Costello. *An Emerging Chinese Labour Movement* (New York: Routledge, 2007).

- Brown, Radcliffe. *Structure and Function in Primitive Societies*. London: Cohen and West, 1952.
- Brown, Ronald C.. *Understanding Labour and Employment Law in China*. Cambridge: Cambridge University Press, 2010.
- Brown, Ronald C.. "Defusion of Labour Disputes in China: Collective Negotiations, Mediation, Arbitration, and the Courts." *China-EU Law Journal* 3 (2014).
- Biddulph, Sarah, Cooney, Sean, and Zhu Ying. "Rule of Law with Chinese Characteristics: The Role of Campaigns in Lawmaking." *Law & Policy* 34 (4) 2012: 373.
- Biddulph, Sarah, Cooney, Sean, and Zhu Ying. *Law and Fair Work in China*. London: Routledge, 2012.
- Buoye, Thomas M. *Manslaughter, Markets, and Moral Economy: Violent Disputes over Property Rights in Eighteenth Century China*. Cambridge; New York;: Cambridge University Press, 2000.
- Cai, Yongshun. *State and Laid-off Workers in Reform China: the Silence and Collective Action of the Retrenched*. Oxford: Routledge, 2006.
- Chan, Anita. "Revolution or Corporatism? Workers and Trade Unions in Post-Mao China." *The Australian Journal of Chinese Affairs* 29 (1993): 31.
- Chan, Anita. "Labour Standards and Human Rights: the Case of Chinese Workers Under Market Socialism." *Human Rights Quarterly* 20.4 (1998): 886.
- Chan, Anita. "Chinese Trade Unions and Workplace Relations in State-Owned and Joint-Venture Enterprises." in *Changing Workplace Relations in the Chinese Economy*, edited by Malcolm Warner. New York: Palgrave Macmillan, 2000.
- Chan, Anita. *China's Workers under Assault: the Exploitation of Labour in a Globalizing Economy*. Armonk, N.Y.: M.E. Sharpe, 2001.
- Chan, Anita. "A 'Race to the Bottom': Globalization and China's Labour Standards." *China Perspectives* 52(2003): 2.

- Chan, Anita. "Strikes in China's Export Industries in Comparative Perspective." *China Journal*, 65, (2011): 27.
- Chan, Anita. "China's Migrant Workers' Legal Rights Awareness on the Rise." *International Centre for Trade Union Rights* 22 (2015).
- Chan, Anita and Wang, Hongzen. "*Raising Labour Standards, Corporate Social Responsibility and Missing Links – Vietnam and China Compared.*"
- Chan, Jenny. "Chinese Women Workers Organize in the Export Zones." *New Labour Forum* 15.1 (2006): 19.
- Chan, Jenny. "Meaningful Progress or Illusory Reform? Analyzing China's Labour Contract Law." *New Labour Forum* 18.2 (2009): 43.
- Chan, Jenny and Selden, Mark. China's Rural Migrant Workers, the State, and Labour Politics. *Critical Asian Studies* 46 (4) (2014): 599.
- Chang, Leslie T.. *Factory Girls: from Village to City in a Changing China*. New York: Spiegel and Grau, 2009.
- Changjiang Times. "There are Xiaogan Plasterers in Every Building in the Northeast (Dongbei Meidong Lou, Dou You Xiaogan Niwajiang)." May 2, 2013. Accessed May 30 2016, <http://www.changjiangtimes.com/2013/05/441741.html>.
- Chen, C. J. J. "Growing Social Unrest and Emergent Protest Groups in China." In *Rise of China: Beijing's Strategies and Implications for the Asia-Pacific*, edited by H. H. M. Hsiao and C. Y. Lin. New York: Routledge, 2009.
- Chen, Duanhong. "Confrontation, from Administrative Litigation to See the Way out of China's Constitutional Government (Duizhi, cong xingzheng susong kan Zhongguo xianzheng chulu)." *Jurisprudence in China and Foreign Countries* 4 (1995): 6.
- Chen, Feng. "Subsistence Crises, Managerial Corruption and Labour Protests in China." *The China Journal* 44 (2000): 41.
- Chen, Feng. "Legal Mobilization by Trade Unions: The Case of Shanghai." *The China Journal* 52.52 (2004): 27.

- Chen, Feng. "Between the State and Labour: the Conflict of Chinese Trade Unions' Double Identity in Market Reform." *The China Quarterly* 176 (2005): 1006;
- Chen, Feng. "Trade Unions and the Quadripartite Interactions in Strike Settlement in China." *China Quarterly* 201 (2010): 104.
- Chen, Fuxing. "The Concentratively Recruiting Migrant Workers Campaign. Handan, Migrant Workers Response Actively (Nongmingong Jizhong Ruhui Xingdong, Handan, Nongmingong Ruhui Ting Jiji)," *Worker Daily*, August 5, 2015, accessed March 15th, 2016, <http://news.sina.com.cn/o/2015-08-05/061032174625.shtml>.
- Chen, Hong, "Thousands of Huawei Staff 'Quit,'" *China Daily*, November 3, 2007. Accessed May 28 2015, http://www.chinadaily.com.cn/bizchina/2007-11/03/content_6228248.htm.
- Chen, Wang, "An Investigation of the Conditions of Rural Migrant Workers' Rights during the Financial Crisis (Jinrong weiji beijing xiade nongmingong quanyi zhuangkuang diaocha)." *Labour Law Review* (2009).
- Chen, Yu-Fu and Funkeb, Michael. "China's New Labour Contract Law: No Harm to Employment?" *BOFIT Discussion Papers* 29 (Institute for Economies in Transition, Bank of Finland).
- Cheng, Yanyuan and Liu, Yang. "The Impact of Labour Contract Law's Enforcement on Chinese Enterprises' Human Resources Management – Based on the Perspective of HR Managers." *Economic Theory and Business Management* 7 (2010), 66.
- Chesneaux, Jean. *The Chinese Labour Movement, 1919-1927*, translated by H. M. Wright. Stanford: Stanford University Press, 1968.
- China Labour Bulletin, *China's Catch 22: When It Costs More to Claim Wage Arrears than the Wage Arrears Are Worth*, October 5, 2005. Accessed May 18, 2015, <http://www.clb.org.hk/en/node/17585>.
- Clarke, Simon. "Post-Socialist Trade Unions: China and Russia." *Industrial Relations Journal* 36. 1 (2005): 2.

- Clarke, Simon and Pringle, Tim. "Can Party-Led Trade Unions Represent Their Members?" *Post-Communist Economies* 21.1 (2009): 85.
- Chen, Zhilong. "To the Shortage of Labour Recruitment Difficult Symbol (Zhaogong Nan Xiangzheng Laodongli Zouxiang Duanque)." *Sina Finance*, February 20 2014. Accessed May 23, 2016, <http://finance.sina.com.cn/zt/china/20140220/093318276916.shtml>.
- China Construction Industry Association, *China Construction Industry Development Strategy and Industrial Policy Research Report (Zhongguo Jianzhuye Fazhan Zhanlue yu Chanye Zhengce Yanjiu Baogao)*. Beijing: Construction Industry Publishing, 2005.
- China Daily, "Laws needed to ensure migrant workers' wages," *China Daily*, Mar. 9, 2006. Accessed June 6, 2015, <http://www.china.org.cn/english/null/160892.htm>.
- China Labour Watch, *Chengdu Steel Factory Workers Strike for More Pay*, May 10 2012. Accessed October 12, 2015, <http://www.chinalabourwatch.org/news/new-410.html>.
- China Labour Watch, "Poor Working Conditions Plague Guangdong." Accessed March 19, 2015, <http://www.chinalabourwatch.org/en/web/Clauseicle>.
- China News. "2.2 Million Migrants Got Urban Household Registration in the First Year of Rural-urban Household Registration Integration Reform in Chongqing," July 30, 2011. Accessed August 10, 2016, <http://news.sina.com.cn/c/2011-07-30/212422906093.shtml>.
- China Review News. "Han Changfu, Secretary of Agriculture Ministry Talks about New Generation of Migrant Workers." *China Review News*, February 1 2010. Accessed June 6 2015, <http://mag.chinareviewnews.com/doc/1012/1/6/9/101216949.html?coluid=7&kindid=0&docid=101216949&mdate=0201144628>.
- Chinahr Net, "Our Workers are Powerful: a Review at Honda Strike." Accessed on April 28, 2015,

<http://www2.chinahrd.net/Authorcolumn/subject.aspx?typeid=newsandid=6562dd15-1a28-4795-a1a9-ecff0b7b4bea>.

Chongqing Daily, "Implementing the 'Concentratively Recruiting Migrant Workers Campaign' (Shishi 'Nongmingong Jizhong Ruhui Xingdong')," January 13, 2016, accessed March 15, 2016,

<http://news.163.com/16/0113/05/BD6FN3E700014AED.html>.

Chu, Tsu Tung. *Law and Society in Traditional China*. Beijing: The Commercial Press, 2011.

Chung, Olivia. "China Labour Shortage Spreads," *Asia Times Online*, October 22, 2011. Accessed September 26, 2015,

<http://www.atimes.com/atimes/ChinaBusiness/MA29CbO1.html>.

Clarke, Simon; Lee, Chang-Hee; and Li, Qi, "Collective Consultation and Industrial Relations in China," *British Journal of Industrial Relations* 42.3 (2004): 235.

Cohen, Paul A. *China Unbound: Evolving Perspectives on the Chinese Past*. London, Routledge, 2003.

Conaghan, Joanne, Fischl, Richard Michael and Klare, Karl, eds. *Labour Law in an Era of Globalization: Transformative Practices and Possibilities*. Oxford: Oxford University Press, 2002.

Congressional Executive Commission on China, Report on Worker Actions in China, "Recent Worker Actions in China," July 2, 2010. Accessed March 28, 2015,

<http://www.cecc.gov/pages/virtualAcad/index.phpd?showsingle=142008>.

Cooney, Sean; Biddulph, Sarah; Kungang, Li; and Zhu, Ying; "China's New Labour Contract Law: Responding to the Growing Complexity of Labour Relations in the PRC." *UNSW Law Journals (University of New South Wales)* 30.3 (2007): 786.

Cooke, Fang Lee. "The Changing Dynamics of Employment Relations in China: An Evaluation of the Rising Level of Labour Disputes." *Journal of Industrial Relations* 50.1 (2008): 111.

- Cotterrell, Roger. "Is There a Logic of Legal Transplants?" in *Adapting Legal Cultures*, edited by David Nelken and Johannes Feest. Portland, OR: Hart, 2001.
- CPC's United Front Work Department. Accessed December 29, 2016, <https://www.thechinastory.org/yearbooks/yearbook-2014/forum-begging-to-differ/the-united-front-in-an-age-of-shared-destiny/>.
- Currie, Dawn. SOCI 503 Course Description. Vancouver, UBC, 2011.
- Daniel Z. Ding and Malcolm Warner, "Re-inventing China's Industrial Relations at Enterprise Level: An Empirical Field-Study in Four Major Cities," *Industrial Relations Journal* 30:3 (1990): 243.
- Deng, Xiaoping, *Selected Works of Deng Xiaoping (Deng Xiao Ping Wen Xuan)*. Beijing: People Press, 1993.
- Deng, Zhenglai, *State and Society, Research on Civil Society in China (Guojia yu Shehui, Zhongguo Shimin Shehui Yanjiu)*. Chengdu: Sichuan People's Press, 1997.
- Deng, Zhenglai ed., *State and Civil Society, Research Path in Sociology Study (Guojia yu shimin shehui, yizhong shehui lilun de yanjiu lujing)*. Chengdu: Sichuan People's Press, 1999.
- Department of Market Supervision and Research Center, Ministry of Housing and Urban Rural Development of PRC. *Research Report on Reform and Development of China's Construction Industry 2014 (Zhongguo Jianzhuye Gaige yu Fazhan Yanjiu Baogao 2014)*. Beijing: China Construction Industry Press, 2015.
- Ding, Daniel Z; Goodall, Keith; and Warner, Malcolm. "The Impact of Economic Reform on the Role of Trade Unions in Chinese Enterprises." *The International Journal of Human Resource Management* 13.3 (2002): 431.
- Djankov, Simeon and Ramalho, Rita. "Employment Laws in Developing Countries." *Journal of Comparative Economics* 37 (2009): 3.
- Du, Huajiang, "Changing the Title of Migrant Workers is a Progress (Gaibian Nongmingong Chengwei Yeshe Yizhong Jinbu)." Accessed July 24, 2016,

http://news.xinhuanet.com/comments/2012-04/15/c_111780798.htm.

Economist, “Out Brothers, Out!” January 15, 2015.

Ehrmann, Henry Walter. *Comparative Legal Cultures*. Englewood Cliffs, N.J.: Prentice-Hall, 1976.

Elfstrom, Manfred and Kuruvilla, Sarosh. “The Changing Nature of Labour Unrest in China.” *ILR Review* (April 2014): 453.

Elizabeth Perry J.. *Challenging the Mandate of Heaven: Social Protest and State Power in China*. Armonk, NY: M. E. Sharpe, 2002.

Estlund, Cynthia. *A New Deal for China’s Workers*. Harvard Up: Cambridge Ma, 2017.

Ewald, William. “Comparative Jurisprudence (II): The Logic of Legal Transplant.” *The American Journal of Comparative Law* 43 (1985): 489.

Fan, Cindy C.. “Migration, Household Registration, and the City,” In *China Urbanizes: Consequences, Strategies, and Policies*, edited by Shahid Yusuf and Tony Saich. Washington DC, The World Bank, 2008).

Fang, Kecheng, “Sun Zhigang, Abolish One Regulation because of One Man.” *South Weekend*, December 31st, 2010. Accessed November 12, 2016, <http://www.infzm.com/content/54102>.

Feldmann, Horst. “The Unemployment Effects of Labour Regulation around the World.” *Journal of Comparative Economics* 37 (2009): 76;

Finance. “Deep Analyze the Strike in Honda Foshan Branch,” June 1, 2010. Accessed September 26, 2015, <http://finance.591hx.com/Clauseicle/2010-06-01/0000057894s.shtml>.

First Finance Daily. “Many Cities Invest More Than 100 Billion Yuan on Construction, Richer Than a Country. Wuhan Plans to Spend 2,000 Billion Yuan in The Next 5 Years (Woguo Duodi Chengjian Niantou Qianyi Haoke Digu. Wuhan ni Wunian hua 2 Wanyi).” Accessed August 31, 2014, <http://finance.sina.com.cn/china/20140219/015718256727.shtml>.

- Fitzgerald, Simon; Chen, Xin; Qu, Hui. "Occupational Injury among Migrant Workers in China: A Systematic Review." *Injury Prevention: Journal of the International Society for Child and Adolescent Injury Prevention* 19.5(2013): 348.
- Freeman, Richard B. and Li, Xiaoying. "How Does China's New Labour Contract Law Affect Floating Workers?" *National Bureau of Economic Research Working Paper Series* (19253) (2013).
- French, Howard. "Land of 74,000 Protests (but little is ever fixed)." *New York Times*, August 24, 2005.
- Friedman, Eli. "China in Revolt," *Jacobin*, 7/8, January 29th, 2014. Accessed October 12, 2015, <http://jacobinmag.com/2012/08/china-in-revolt/>.
- Friedman, Eli; and Lee, Ching Kwan. "Remaking the World of Chinese Labour: A 30-Year Retrospective." *British journal of Industrial Relations* 48.3 (2008): 507.
- Friedman, Lawrence M.. "Legal Culture and Social Development." *Law and Society Review* 4 (1969): 29.
- Friedman, Lawrence M.. *A History of American Law*. New York: Simon and Schuster, 1973.
- Friedman, Lawrence M.. "Law, lawyers, and popular culture." *The Yale Law Journal* 98 (June, 1989): 1584.
- Friedman, Lawrence M.. "Is There a Modern Legal Culture?" *Ratio Jurisprudence* 7.2 (1994): 117.
- Friedman, Lawrence M.. "Some Comments on Cotterrell and legal transplants," in *Adapting Legal Cultures*, edited by David Nelken and Johannes Feest. Portland, OR: Hart, 2001.
- Fushun Daily, "City General Trade Union Implements Actively, the Concentratively Recruiting Migrant Workers Campaign (Shi Zong Gonghui Jiji Tuijin, Nongmingong Jizhong Ruhui Xingdong)," December 25, 2015, accessed March 15, 2016, http://edu.gmw.cn/newspaper/2015-12/25/content_110400857.htm.

- Gaetano, Arianne M. "Filial Daughters, Modern Women: Migrant Domestic Workers in the Post-Mao Beijing," in *On the Move: Women and Rural-to-urban Migration in Contemporary China*, edited by Gaetano, Arianne M. and Jacka Tamara. New York: Columbia University Press, 2004.
- Gaetano, Arianne M. and Jacka Tamara, eds., *On the Move: Women and Rural-to-urban Migration in Contemporary China*. New York: Columbia University Press, 2004.
- Gallagher, Mary E.. *Contagious Capitalism: Globalization and the Politics of Labour in China*. Princeton: Princeton University Press, 2005.
- Gallagher, Mary E.. "Use the Law as Your Weapon! Institutional Change and Legal Mobilization in China." in *Engaging the Law in China: State, Society, Possibilities for Justice*, edited by Neil J. Diamant, Stanley B. Lubman, and Kevin J. O'Brien. Stanford.: Stanford University Press, 2005.
- Gallagher, Mary E.. "We Are Not Machines, Teen Spirit on China's Shopfloor." *China Beat*, January 29, 2014. Accessed September 26, 2015, <http://www.thechinabeat.org/?p=2538>.
- Gallagher, Mary E.. "China's Workers Movements and the End of the Rapid-Growth Era." *Daedalus* 143.2 (2014): 81.
- Gallagher, Mary; Giles, John; Park, Albert; and Wang, Meiyan, "China's 2008 Labour Contract Law: Implementation and Implications for China's Workers." *Policy Research Working Paper 6542*, The World Bank Development Research Group Human Development and Public Services Team (July 2013).
- Gallagher, Mary and Dong, Baohua, "Legislating Harmony: Labour Law Reform in Contemporary China." in *From Iron-Rice Bowl to Informalization: Markets, Workers and the State in a Changing China*, edited by Sarosh Kuruvilla, Ching Kwan Lee, and Mary Gallagher. New York: Cornell University Press, 2011.
- Gao, Quanxi, Zhang, Wei, and Tian, Feilong. *The Road to the Rule of Law in Modern China*. Berlin. Heidelberg: Springer Berlin Heidelberg, 2015.

- Gasster, Michael. "Reform and Revolution in China's Political Modernization." in *China in Revolution: The First Phase, 1900–1913*, edited by Mary C. Wright. New Haven: Yale University Press, 1968.
- Geertz, Clifford. *Local Knowledge: Further Essays in Interpretive Anthropology*. New York: Basic Books, 1983.
- Gong, Pixiang. *Evolution of Legal Modernity in China (Zhongguo fazhi xiandaihua de jincheng)*. Beijing: People's Public Security University Press, 1991.
- Gong, Pixiang. *Philosophy of Law and Legal Modernity (Fa zhexue yu fazhi xiandaihua)*. Nanjing: Nanjing Normal University Press, 1998.
- Gong, Pixiang ed., *Revolution of Law in Modern China (Dangdai Zhongguo falv geming)*. Beijing: Law Press, 1999.
- Han, Zhaozhou and Ge, Long. "Statistical Analysis on the Contribution of Migrant Workers to China's Economic Growth and Achievement Sharing (Nongmingong dui Zhongguo Jingji Zengzhang Gongxian yu Chengguo Fenxiang de Tongji Fenxi)." *Statistics and Decision Making* 4(2015):100.
- Halegua, Aaron. "Reforming the People's Mediation System in Urban China." *Hong Kong Law Journal* 35 (2005): 724.
- Halegua, Aaron. "Getting Paid: Processing the Labour Disputes of China's Migrant Workers." *Berkeley Journal of International Law* 26.1 (2008): 254.
- Hassard, John; Sheehan, Jackie; Zhou, Meixiang; Terpstra-Tong, Jane; and Jonathan, Morris. *China's State Enterprise Reform: From Marx to the Market* (New York: Routledge, 2007).
- He, Qinhua, He, Weifang, and Tian, Tao, eds., *Legal Culture, Talks by three Scholars (Falv Wenhua San Ren Tan)*. Beijing: Peking University Press, 2010.
- He, Xin Frank. "Regulating Rural-urban Migrants in Beijing: Institutional Conflict and Ineffective Campaigns." *Stanford Journal International Law* 39.2 (2003): 177.
- Head, John W.. *Great Legal Traditions: Civil Law, Common Law, and Chinese Law in*

- Historical and Operational Perspective*. USA: Carolina Academic Press, 2011.
- Henley, John S. and Nya, Mee Kau. "Introducing Market Forces into Managerial Decision-Making in Chinese Industrial Enterprises." *Journal of Management Studies* 23:6 (November 1986): 635.
- Hepple, Bob. *Labour Laws and Global Trade*. Oxford; Portland, OR: Hart, 2005.
- Hershatter, Gail. *The Workers of Tianjin, 1900-1949*. Stanford: Stanford University Press, 1986.
- Hesketh, T., L. Li, X. Ye, H. Wang, M. Jiang, and Tomkins, A. "HIV and Syphilis in Migrant Workers in Eastern China." *Sexually Transmitted Infections* 82.1 (2006):11.
- Ho, Virginia Harper. *Labour Dispute Resolution in China: Implications for Labour Rights and Legal Reform*. Regents of the University of California, 2003.
- Ho, Virginia E. Harper. "From Contracts to Compliance? An Early Look at Implementation under China's New Labour Legislation." *Columbia Journal of Asian Law* 23.1 (2009): 36.
- Holmes, Oliver W.. *The Common Law*. Cambridge: The Belknap Press of Harvard University Press, 2009.
- Howell, Jude A.. "ACFTU: Beyond Reform? The Slow March of Direct Elections," *China Quarterly* (December 2008): 845.
- Hou, Wailu. *History of Chinese Ancient Society*. Beijing, Shenghuo-Dushu-Xinzhi Joint Publishing Company, 2012.
- Housing and Urban-Rural Development of Hubei, "Ten Construction Brands from Hubei are Well Known," *Hubei Daily*, Page 8, January 17th, 2014. Accessed April 26, 2015, <http://news.cnhubei.com/hbrb/hbrbsslk/hbrb08/201201/t1952689.shtml>.
- Howell, Jude. "Trade Unionism in China: Sinking or Swimming," *Journal of Communist Studies and Transition Politics* 19: 1 (2003): 102.
- Hwang, Kyung-Jin, and Kan Wang. Labour Dispute Arbitration in China: Perspectives of the Arbitrators. *Employee Relations* 37 (5): 2015: 582.

- Huang, Philip C. . “Morality and Law in China, Past and present.” *Modern China* 41.3 (2015): 8.
- Huang, Qian. “The Impact of Job Mobility on Earnings Growth of Migrant Workers in Urban China.” *Frontiers of Economics in China* 6 (Brill, Netherlands, 2011).
- Huang, Ray. *China, A Micro-History (Zhongguo Da Lishi)*. Beijing: Shang Wu Press, 1997.
- Huaxia Web. “The Minimum Income in Hubei Raised from September 1 (Jiu Yue 1 Ri Qi, Hubei Shangtiao Zuidi Gongzi Biaozhun).” August 10, 2015. Accessed April 12, 2016, <http://www.huaxia.com/xgtb/xgla/2015/08/4513640.html>.
- Jacka, Tamara. *Rural Women in Urban China Gender, Migration, and Social Change*. Armonk, N.Y.: M.E. Sharpe, Inc., c2005.
- Jiang, Lishan. “Analysis of the Characteristics of Legal Modernization in China (Zhongguo fazhi xiandaihua jianshe tezheng fenxi).” *Chinese and Foreign Jurisprudence* 4 (1995).
- Jiang, Lishan. “Basic Framework and Implementation Steps of Legal Reform in China (Zhongguo fazhi gaige wenti jiben kuangjia he shishi buzhou).” *Chinese and Foreign Jurisprudence* 6(1996).
- Jiang, Lishan. “Research on Legal Reform and Process of Rule of Law in China (Zhongguo fazhi gaige he fazhigua guocheng yanjiu).” *Chinese and Foreign Jurisprudence* 3(1998).
- Jiang, Lishan. *Legal Modernity, Research on Rule of Law in China (Falv xiandaihua, Zhongguo fazhi daolu wenti yanjiu)*. Beijing: China Legal Publishing House, 2006.
- Jiang, Lisan. *Legal Modernization in China (Zhong Guo Fa Zhi Xian Dai Hua Zhi Lu)*. Beijing: China Legal Publishing House, 2006.
- Jiang, Shan; Zhang, Lu; and Wang, Weihong. “The Mental Health of Migrant Workers in Chongqing City.” *Psychological Science* (2007): 1;
- Jin, Weixing. *Construction Management Theory and Practice in China in Twenty-first*

Century (21 Shiji Zhongguo Jianzhu Ye Guanli Lilun yu Shijian). Beijing: Construction Industry Press of China, 2006.

Kahn, Joseph. "Pace and scope of protests in China accelerated in '05'." *New York Times*, January 20, 2005.

King, Gary; Pan, Jennifer; and Roberts, Margaret E.. "How Censorship in China Allows Government Criticism but Silences Collective Expression." *American Political Science Review* 107.2 (2013): 326.

King, Yeo-Chi. "Construction of China's Modern Civilization – On China's Modernization and Modernity." in *Economic Democracy and Economic Liberty*, edited by Junning Liu, 42. Shanghai: Sanlian Bookstore Press, 1998.

Klare, Karl. "The Horizons of Transformative Labour and Employment Law," in *Law and Globalization from Below: towards a Cosmopolitan Legality*, edited by Boaventura de Sousa Santos and Cesar A. Rodriguez-Garavito. Cambridge; New York: Cambridge University Press, 2005.

Lau, Raymond W.K.. "China: Labour Reform and the Challenge Facing the Working Class." *Capital and Class* 61 (1997): 45.

Lee, Ching Kwan, *Gender and the South China Miracle - Two Worlds of Factory Women*. Berkeley: University of California Press, 1998.

Lee, Ching Kwan. *Against the Law: Labour Protests in China's Rustbelt and Sunbelt*. University of California Press, 2007.

Lee, Ching Kwan and Zhang, Yonghong, "The Power of Instability: The Microfoundations of Bargained Authoritarianism in China." *American Journal of Sociology* 118.6 (2013): 1475.

Lee, Grace O. M. and Warner, Malcolm. "The Management of Human Resources in Shanghai, a Case Study of Policy Responses to Employment and Unemployment in the People's Republic of China," in *China's Business Reforms: Institutional Challenges in a Globalized Economy*, edited by Russell Smyth, On Kit Tam,

- Malcolm Warner and Cherrie Jiuhua Zhu. New York: Routledge Curzon, 2005).
- Lee, Hong Yung, "Xiangang, the Chinese Style of Laying Off Workers." *Asian Survey* 40.6 (2000): 914.
- Legrand, Pierre. "What "Legal Transplants?" in *Adapting Legal Cultures*, edited by David Nelken and Johannes Feest. Portland, OR: Hart, 2001.
- Lei, Guang. "The Market as Social Convention: Rural Migrants and the Making of China's Home Renovation Market," *Critical Asian Studies* 37(3) (2005): 391;
- Li, Gang; Shen, Keting; and Guo, Chaoxian. "Road to Enhance the Competitiveness of China's Labour-intensive Industries – A Survey after the Implementation of "China's New Labour Contract Law." *China Industrial Economics* 9 (2009): 37.
- Li, Guozhen, "Summary on Migrant Workers Research in the Past Decades, Case Study of 491 Articles (Jishinianlai nongmingong wenti yanjiu zongshu, yi zhongguo quanwen qikan wang shang 491pian wenzhang weili." *Social Science Forum* 80 (2008): 68.
- Li, Kaiyuan, *Collapse of Qin Empire (Qin Diguo De Beng Kui)*. (Zhonghua Publication, 2007).
- Li, Ling. "Towards a More Civil Society: Mingong and Expanding Social Space in Reform-era China." *Columbia Human Rights Law Review* 149.156 (2001).
- Li, Ling, Hui, Ouyang, Chen, Yaosen, and Lin, Wensheng. "Administration on Floating Population in Big Cities, Case Study in Guangzhou Comparing with Beijing and Shanghai (Dachengshi liudong renkou tedian ji guanli, yi guangzhou weili jianyu Beijing Shanghai de bijiao)." *Population Studies* 2.46 (2001).
- Li, Lu; Wang, Hongmei; Ye, Xuejun; Jiang, Minmin; Lou, Qinyuan; and Hesketh, Therese. "The Mental Health Status of Chinese Rural–urban Migrant Workers, Comparison with Permanent Urban and Rural Dwellers." *Social Psychiatry and Psychiatric Epidemiology* 42(2007): 9.
- Li, Mengbai and Hu, Xin, *Influence of Floating Population on Urban Development and*

- Some Countermeasures (Liudong renkou dui dachengshi fazhan de yingxiang ji duice)*. (Beijing: Jingji Daily Publisher, 1991).
- Li, Qiang, Liu, Gordon and Zang Wenbin. "The Health of Left-behind Children in Rural China." *China Economic Review* 5 (2015).
- Li, Rui. *Later Years of Mao Zedong (Wan Nian De Mao Ze Dong)*. Beijing: Chun Qiu Press, 1999.
- Li, Rui, *The Early Revolutionary Activities of Comrade Mao Ze-dong (Mao Ze-dong Tongzhi de Chuqi Geming Huodong)*. Beijing: Chinese Youth Publisher, 1957.
- Li, Shaohua, "Mao Zedong and Changsha Construction Workers' Strike (Mao Zedong he Changsha Nimu Gongren Da Bagong)." *Hunan Workers' Daily*, November 20th, 2013. Access July 8, 2015, http://media.worker.cn/sites/media/hngsb/2013_11/20/GR0103.htm.
- Li, Yi; Tao, Zhigang; and Wang, Yijiang. "Union Effects on Performance and Employment Relations: Evidence from China." *China Economic Review* 21 (2010): 202.
- Li, Zhen, ed., *Victims at Work: Selected Works on Occupational Safety and Health Right of Migrant Worker (Gongshangzhe: nongmingong zhiye anquan yu jiankang quanyi lunji)*. Beijing: Social Science Publisher, 200.
- Liang, Zhiping. *Interpretation of Law, the Past, Current, and Future of Law in China (Fa Bian, Zhongguo Fa de Guoqu, Xianzai, he Weilai)*. Beijing: The Political Science and Law Publisher of China University, 2004.
- Liang, Zhiping, *Seeking Harmony in Natural Order, Research on Chinese Traditional Legal Culture (Xunqiu Ziran Zhixu zhong de Hexie: Zhongguo Chuantong Falv Wenhua Yanjiu)*. Beijing: China University of Political Science and Law press, 2011.
- Liang, Qichao. *Confucian Philosophy (Ru Jia Zhexue)*. Beijing: China Book Company, 2015.
- Lin, Jing. "Labour Mobility without Pension Portability: Migrant Workers' Endangered

- Pension Entitlement in China.” *Asian Social Work and Policy Review* 9 (Richmond: Wiley Subscription Services, Inc., 2015).
- Liu, Shinan, “All Hail China’s New Job-Seekers.” *China Daily*, February 27, 2008.
 Accessed September 24, 2015,
http://news.xinhuanet.com/english/2008-02/27/content_7676883.htm.
- Liu, Jieyu. “Ageing in Rural China: Migration and Care Circulation.” *The Journal of Chinese Sociology* 3 (Springer Berlin Heidelberg, Berlin/Heidelberg, 2016).
- Liu, Mingwei. “Conflict Resolution in China.” In *The Oxford Handbook of Conflict Management in Organizations*, edited by William K. Roche, Paul Teague, and Alexander J. S. Colvin. Oxford: Oxford University Press, 2014.
- Liu, Mingwei and Li, Chunyun. “The Puzzle of Strong Union Effects on Workers in China.” *Rutgers University School of Management and Labour Relations* (2014).
- Liu, Ran. *Spatial Mobility of Migrant Workers in Beijing, China*. DE: Springer International Publishing, 2015.
- Link, Perry, Madsen Richard P., and Pickowicz Paul G.. “Introduction,” in *Unofficial China, Popular Culture and Thought in the People’s Republic*, edited by Perry Link, Richard P. Madsen, and Paul G. Pickowicz. Westview Press, Inc., 1989.
- Lu, Youjie and Fox, Paul W.. “The Construction Industry in China: Its Image, Employment Prospects and Skill Requirements.” *International Labour Organization, Geneva* (October 2001), 13.
- Lubman, Stanley B.. “Studying Contemporary Chinese Law: Limits, Possibilities and Strategy.” *The American Journal of Comparative Law* 39.2 (1991): 293.
- Ma, Guoan. *Floating Population and Crime in China (Zhongguo de liudong renkou yu fanzui)*. Beijing: China Legal Publish, 2001.
- Macklem, Patrick. “The Right to Bargain Collectively in International Law: Workers’ Right, Human Right, International Right?” in *Labour Rights as Human Rights*, edited by Philip Alston. Oxford; New York: Oxford University Press, 2005.

- Marx, Karl. *On Capital II*. Beijing: People Press, 2004.
- Maynes, Mary Jo, Pierce, Jennifer L., and Lasset, Barbara. *Telling Stories: The Use of Personal Narratives in the Social Sciences and History*. Ithaca and London, Cornell University Press, 2008.
- Mayo, Richard E. and Liu, Gong, "Reform Agenda of Chinese Construction Industry." *Journal of Construction Engineering and Management* 121.1 (1995): 80.
- McAuley, M. "Political Culture and Communist Politics: One Step Forward Two Steps Back." *Political Culture and Communist Studies* (1984).
- Macauley, Melissa Ann. *Social Power and Legal Culture: Litigation Masters in Late Imperial China*. Stanford, Calif: Stanford University Press, 1998.
- Mirsky, Jonathan. *A New Deal for China's Workers?* Times Supplements Ltd. 2017.
- Ministry of Construction of PRC, Report on the Fifty Years of New China's *Construction Industry (Xin Zhongguo jianzhu ye wushi nian)*. Beijing: China Three Gorges Press, 2000.
- Ministry of Labour and Social Security (MOLSS), "Labour Dispute Resolution in 2005," accessed April 19 2015, http://www.molss.gov.cn/gb/ywzn/2006-06/08/content_119054.htm.
- Minzner, Carl F.. "China's Turn against Law." *The American Journal of Comparative Law* 59 (4) (2011), 935.
- Montesquieu, Charles de Secondat baron de. *The Spirit of Laws*, translated from French of M. de Secondat, Baron de Montesquieu (London; Edinburgh: A. Donaldson, 1768.
- Morse, Hosea Ballou. *The Gilds of China: with an Account of the Gild Merchant or Co-hong of Canton*. New York: Russell and Russell, 1967.
- Nang, Leung Pak and Ngai, Pun. "The Radicalization of the New Chinese Working Class: a Case Study of Collective Action in the Gemstone Industry." *Third World Quarterly* 30.3 (2009): 551.

National Bureau of Statistics of PRC. “*Statistics Report on National Economic and Social Development of 2014 (2014 Nian Guomin Jingji he Shehui Fazhan Tongji Baogao)*.” Accessed April 14, 2015,

http://www.stats.gov.cn/tjsj/zxfb/201502/t20150226_685799.html.

National Bureau of Statistics of PRC. “*Statistics Report on National Economic and Social Development of 2015 (2015 Nian Guomin Jingji he Shehui Fazhan Tongji Baogao)*.” Accessed May 22, 2016,

http://www.stats.gov.cn/tjsj/zxfb/201604/t20160428_1349713.html.

[National Bureau of Statistics](#) of China. *China Labour Statistical Yearbooks. (ZhongGuo Laodong Tongji Nianjian)*. Beijing: China Statistics Press, 2005.

Nelken, David. “Towards a sociology of legal adaptation,” in *Adapting Legal Culture*, edited by David Nelken and Johannes Feest. Oxford and Portland, Oregon, Hart Publishing, 2001.

News of CPC. “*Central ideological and political work conference (Zhongyang sixiang zhengzhi gongzuo huiyi)*.” Accessed December 5th, 2016,

<http://dangshi.people.com.cn/GB/151935/176588/176597/10556650.html>.

Ngai, Pun. *Made in China: Women Factory Workers in a Global Workplace*. Durham: Duke University Press, 2005.

Ngai, Pun and Lu Huilin, “*Neoliberalism, Urbanism, and the Plight of Construction Workers in China*,” *World Review of Political Economy* 1.1 (2010):127.

Nielsen, Ingrid; Nyland, Chris; Smyth, Russell; Zhang, Mingqiong; and Zhu, Cherie Jiu Hua. “Which Rural Migrants Receive Social Insurance in Chinese Cities? Evidence from Jiangsu Survey Data.” *Global Social Policy* 5.3 (2005): 353.

OECD.OECD Indicators of Employment Protection.

<http://www.oecd.org/employment/emp/oecdindicatorsofemploymentprotection.htm>.

OECD Library. *Labour Market Changes, Labour Disputes and Social Cohesion in China*. 2012.

- Ogden, Suzanna. "China's Developing Civil Society: Interest Groups, Trade Unions and Associational Pluralism." in *Changing Workplace Relations in the Chinese Economy*, edited by Malcolm Warner. New York: Palgrave Macmillan, 2000.
- Park, Albert and Cai, Fang, "The Information of the Chinese Labour Market." in *From Iron Rice Bowl to Informalization: Markets, Workers, and the State in a Changing China*, edited by Sarosh Kuruvilla, Ching Kwan Lee, and Mary E. Gallagher. Ithaca: Cornell University Press/ILR Press, 2011.
- Peerenboom, Randall. *China Modernizes: Threat to the West or Model for the Rest?* Oxford: OUP Oxford, 2007.
- Pei, Minxin. "Rights and Resistance: the changing contexts of the dissident movement." in *Chinese Society: Change, Conflict, and Resistance*, edited by Elizabeth J. Perry and Mark Selden. New York: Routledge, 2003.
- Perks, Robert and Thompson, Alistair, eds. *The Oral History Reader*. London: Routledge, 2006.
- Potter, Pitman B.. "Globalization and Economic Regulation in China: Selective Adaptation of Globalized Norms and Practices." *Washington University Global Studies Law Review* 2(2003): 119.
- Potter, Pitman B.. "Legal Reform in China: Institutions, Culture, and Selective Adaptation." *Law and Social Inquiry* 29.2 (2004): 465.
- Potter, Pitman B.. "Selective Adaptation and Institutional Capacity: Perspectives on Human Rights in China." *International Journal* 61. 2 (2006): 389.
- Potter, Pitman B. "Selective Adaption, Institutional Capacity, and the Reception of International Law under Conditions of Globalization," in *Globalization and Local Adaptation in International Trade Law*, edited by Pitman B. Potter and Biukovic Liljana. Vancouver: UBC Press, 2011.
- Potter, Pitman B.. *China's Legal System*. Malden, MA; Cambridge, UK: Polity, 2013.
- Portelli, Allesandro. *The Death of Luigi Trastulli and Other Stories*. New York: State

University of New York Press, 1990.

- Pringle, Tim. *Trade Unions in China: The Challenge of Labour Unrest*. London: Routledge, 2011.
- Pringle, Tim and Clarke, Simon. *The Challenge of Transition: Trade Unions in Russia, China and Vietnam* (New York: Palgrave Macmillan, 2011).
- Pun, Ngai and Lu, Huilin, “Neoliberalism, Urbanism and the Plight of Construction Workers in China.” *World Review of Political Economy* 1.1 (2010): 127.
- Pun, Ngai and Lu, Huilin. “A Culture of Violence: the Labour Subcontracting System and Collective Action by Construction Workers in Post-Socialist China.” *The China Journal* 64 (July 2010);
- Pun Ngai and Smith, Chris, “Putting Transnational Labour Process in Its Place: The Dormitory Labour Regime in Post-Socialist China.” *Work, Employment and Society* 21.1 (2007): 27.
- Qin, Jiang and Björn, Albin. “The Mental Health of Children Left Behind in Rural China by Migrating Parents: a Literature Review.” *Journal of Public Mental Health* 9.3 (2010).
- Qiu, Pengsheng. *When Law Meets Economy, Commercial Law in Ming and Qing Dynasty in China* (Dang falv yushang jingji, mingqing zhongguo de shangye falv). Taipei, Wunan Tushu Chuban Gufen Youxian Gongsi, 2008.
- Remington, Thomas F.; and Cui, Xiaowen. “The Impact of the 2008 Labour Contract Law on Labour Disputes in China.” *Journal of East Asian Studies* 15 (2015).
- Ren, Qiang. *Knowledge, Belief, and Surpassing, Interpretation of Li Fa System of Confucianism* (*Zhishi, xinyang, yu chaoyue, rujia lifa sixiang jiedu*). Beijing: Beijing University Press, 2009. Rowe, William T. *Crimson Rain: Seven Centuries of Violence in a Chinese County*. Stanford, Calif: Stanford University Press, 2007. Rozelle, Scott, Guo, Li, Shen, Minggao, Hughart, Amelia and Giles, John. “Leaving China’s Farms: Survey Results of New Paths and Remaining Hurdles to

- Rural Migration.” *The China Quarterly* 158 (1999): 367.
- Saich, Tony. *The Origins of the First United front in China: The Role of Sneevliet (alias maring)*. New York; Leiden, 1990.
- Santos, Boaventura de Sousa. “Beyond Neoliberal Governance: the World Social Forum as Subaltern Cosmopolitan Politics and Legality,” in *Law and Globalization from Below: towards a Cosmopolitan Legality*, edited by Boaventura de Sousa Santos and Cesar A. Rodriguez-Garavito. Cambridge; New York: Cambridge University Press, 2005.
- Sargeson, Sally. *Reworking China’s Proletariat*. New York: St. MClausein’s, 1999.
- Seeborg, Michael C., Jin, Zhenhu, and Zhu, Yiping. “The New Rural-urban Labour Mobility in China: Causes and Implications.” *Journal of Socio-Economics* 29.1 (2000): 39.
- Shaffer, Lynda. “Mao Ze-dong and the October 1922 Changsha Construction Workers’ Strike,” *Modern China* 4.4 (1978): 383.
- Shen, Jie. *Labour Disputes and Their Resolution in China*. Oxford: Chandos, 2007.
- Shen, Liren. *Chinese Migrant Workers (Zhongguo Nongmingong)*. Beijing, Democracy & Construction Press, 2005.
- Shen Xu, *Explanations of Language and Words (Shuo Wen Jie Zi)*. Beijing, Zhonghua Publishing, 2013.
- Shen, Yuan. *Market, Class, and Society (Shichang, Jieji yu shehui)*. Beijing: China Social Sciences Publishing House, 2007.
- Silver, Beverly J. and Zhang, Lu, “China as an Emerging Epicenter of World Labour Unrest.” in *China and Transformation of Global Capitalism*, edited by Ho-Fung Huang. New York: RoutledgeCurzon, 2004.
- Silverman, Gary. “Vital and Vulnerable.” *Far Eastern Economic Review* 23 (1996): 60.
- Sima, Qian (145 B.C. - Unknown) *Records of History (Shi Ji)*. Volume 6, Qin Shi Huang Records (Qin Shi Huang Benji). Beijing: Huaqiao Publishing of China, 2013.

- Solinger, Dorothy J. “Citizenship Issues in China’s Internal Migration: Comparisons with Germany and Japan.” *Politic Science Quarter* 114.3 (1999): 455.
- Solinger, Dorothy. “The New Crowd of the Dispossessed: The Shift of the Urban Proletariat from Master to Mendicant.” in *State and Society in 21 Century China: Crisis, Contention and Legitimizing*, edited by Peter Hays Cries and Stanley Rosen. New York: Routledge Curzon, 2004.
- South China Morning Post, “Labour Disputes in China Increase as the Workforce Shrinks,” April 18, 2014. Accessed September 16, 2015, <http://www.scmp.com/news/china/Clauseicle/1486398/labour-disputes-china-increase-workforce-shrinks>
- Statistic Bureau of Wuhan. *Statistic Yearbook of Wuhan 2014*. Accessed October 13, 2016, <http://www.whjt.gov.cn/Attachment/201604/201604201721390237.pdf>
- Stone, Katherine V. W.. “Flexibilization, Globalization, and Privatization: Three Challenges to Labour Rights in Our Time.” *Osgoode Hall Law Journal* 44 (2006): 77.
- Su, Li. *Rule of Law, and its Local Resources (Fazhi jiqi Bentu Ziyuan)*. Beijing: China University of Political Science and Law press, 2004.
- Su, Yang and He, Xin. “Street as Courtroom: State Accommodation of Social Protest in China.” *Law and Society Review* 44.1 (2010): 157.
- Tan, Lin and Short, Susan. “Living as Double Outsiders: Migrant Women’s Experiences of Marriage in a Country-level City.” in *On the Move: Women and Rural-to-urban Migration in Contemporary China*, edited by Gaetano, Arianne M. and Jacka Tamara. New York: Columbia University Press, 2004.
- Tanase, Takao. “The Empty Space of the Modern in Japanese Law Discourse,” in *Adapting Legal Cultures*, edited by David Nelken and Johannes Feest. Portland, OR: Hart, 2001.
- Tanner, Murray Scot. “China Rethinks Unrest.” *Washington Quarterly* 27.3 (2004): 137.

- Tao, Xiuaao. *Confucian philosophy and Western philosophy. Their history mission in the modern era (Rujia Zhexue He Xifang Zhexue Tamen De Lishi Shiming He Dangdai Xianghui)*. Beijing: Chinese Social Publication, 2009.
- Taylor, Bill; Chang, Kai; and Li, Qi. *Industrial Relations in China*. Cheltenham: Edward Elgar. 2003.
- Thireau, Isabelle and Hua, Linshan. “The Moral Universe of Aggrieved Chinese Workers: Workers’ Appeals to Arbitration Committees and Letters and Visits Offices.” *The China Journal* 50 (July 2003): 83.
- Thompson, Paul. “The Voice of the Past,” in *The Oral History Reader*, edited by Robert Perks and Alistair Thompson. London: Routledge, 2006.
- Tian, Ming and Xu, Lei. “Investigating the Job Mobility of Migrant Workers in China.” *Asian and Pacific Migration Journal* 7 (2015).
- Tong, Lihua and Xiao, Weidong, Beijing Youth Legal Aid and Research Center, *Investigative Report on the Rights Protection Costs of Chinese Migrant Workers (Zhongguo nongmingong weiquan chengben diaocha baogao)*. 4.2 (Sept. 2005).
- Toynbee, Arnold, Daisaku, Ikeda, and Gage, Richard L. eds. *Choose life: A Dialogue*. London: Oxford University Press, 1976.
- Tunon, Max. “Internal Migration in China: Features and Responses.” ILO Asia and the Pacific 8 (2006). Accessed October 10 2016, www.ilo.org/public/english/region/asro/beijing/download/training/lab_migra.pdf
- Ulla, Liukkunen, and Chen, Yifeng. *Fundamental Labour Rights in China - Legal Implementation and Cultural Logic*. 49, New York: Springer, 2016.
- United Nations. *The National Human Development Report for China*, 2005. Accessed March 8 2015, <http://www.undp.org.cn/modules/php?op=modload&name=News&file=article&dtopic=40&andaid=228>.
- Walder, Andrew G.. “Factory and Manager in an Era of Reform.” *The China Quarterly*

118 (June 1989): 242.

Wang, Feng; Ping, Ren; Zhan, Shaokang; and Shen, Anan. "Reproductive Health Status, Knowledge, and Access to Health Care Among Female Migrant in Shanghai, China." *Journal of Biosocial Science* 37 (2005): 603;

Wang, Jing "Collective Consultation and Labour's Collective Rights in China." *ILERA 16th World Congress*, 2012.

Wang, Wentao and Deng, Jing. "The Words of a Courageous Group of Migrant Workers: How High can 'Little Bird' Fly? (Yongwei jincheng dagong qunti daiyan "Xiao Xiao Niao" neng fei duo gao?)." *Xinhua Net*, January 12, 2006. Accessed November 20, 2015, http://news.xinhuanet.com/focus/2006-01/12/content_4037149_2.htm.

Wang, Zhimin. "Xiaogan Plasterers Take 0.2 Billion Every Year." *Hegagn Evening*, August 19, 2015. Accessed April 26, 2015, <http://hegangnews.dbw.cn/system/2011/08/19/053348017.shtml>.

Wang, Zhuoqiong. "More Workers Staying near Home," *China Daily*, May 2, 2012. Accessed October 10, 2015, <http://www.chinadaily.com.cn/china/2012-04/28/content15166329.htm>.

Warner, Malcolm. "Chinese Trade Unions: Structure and Function in a Decade of Economic Reform: 1979–1989," in *Organized Labour in the Asia-Pacific Region: a Comparative Study of Trade Unionism in Nine Countries*, edited by Stephen Frenkel, Ithaca, NY: ILR Press. 1993.

Warner, Malcolm. "Labour-Management Relations in the People's Republic of China: the Role of the Trade Unions," *International Journal of Human Resource Management* 91.2 (1991):205.

Watson, Alan. *Legal Transplants: an Approach to Comparative Law*. Charlottesville: University Press of Virginia, 1974.

Watson, Alan "Legal Change: Sources of Law and Legal Culture." *University of Pennsylvania Law Review* 131 (1983): 1156-1157.

- Watson, Alan. *The Evolution of Law*. Oxford: Basil Blackwell, 1985.
- Webb, Sidney and Webb, Beatrice, *History of Trade Unionism*. New York: A.M. Kelley, 1965.
- Weber, Max, *Max Weber on Law in Economy and Society*. Harvard University Press, Cambridge, 1954.
- Wedeman, Andrew. "Enemies of the State: Mass Incidents and Subversion in China." *APSA 2009 Toronto Meeting Paper*, January 29, 2014. Accessed September 16, 2015, <http://papers.ssrn.com/Sol3/papers.cfm?abstractid=1451828>.
- Wharton, "Despite Good Intentions, China's New Labour Law Leaves as Many Issues Unresolved as it Addresses." (2007) Accessed on April 4 2016, <http://www.knowledgeatwharton.com.cn/index.cfm?fa=viewfeatureandarticleid=1685andlanguageid=1>
- White, Gordon. "Chinese Trade Unions in the Transition from Socialism: towards Corporatism or Civil Society?" *British Journal of Industrial Relations* 34.3 (1996): 433.
- Wilson, Jeanne L.. "The Polish Lesson: China and Poland 1989-1990." *Studies in Comparative Communism* 23. 3-4 (1990): 259.
- Workers Daily, "ACFTU Launches 'Concentratively Recruiting Migrant Workers Campaign' (Quanzong Kaizhan Nongmingong Jizhong Ruhui Xingdong)," April 16, 2015, accessed March 15, 2016, <http://acftu.people.com.cn/n/2015/0416/c67560-26854243.html>.
- Wuhan Weekly. "There are 2 Million Migrant Workers in Wuhan." Accessed October 13 2016, http://hb.sina.com.cn/news/n/2013-02-08/172452092_2.html.
- Xie, Andy. "Dismantling Factories in a Dreamweaver Nation." *Caixin Online*, June 7, 2010. Accessed June 6, 2015, http://english.caing.com/2010-06-07/100150460_2.html.
- Xi, Xuan and Jin, Chunming. *Brief History of Cultural Revolution (Wen Hua Da Ge Ming*

- Jian Shi*). Beijing: CPC History Publishing, 2006.
- Xin, Tong. "Labour Unions in Enterprises. Proactive Actors, Taking the Operation of the Labour Union at B Corporation, a Sino-Foreign Joint Venture in Beijing, as an Example." *Chinese Sociology and Anthropology* 37.4 (2005): 52.
- Xinhua Net. *Bulletin of the Sixth Plenary Session of the Sixteenth Central Committee of the Communist Party of China (Zhongguo Gongchandang dishiliu jie Zhongyang Weiyuanhui diliu ci quanti huiyi gongbao)*. Accessed December 5, 2016, http://news.xinhuanet.com/politics/2006-10/11/content_5190605.htm.
- Xinhua News, July 25, 1989, cited in *China's Trade Unions and Management*. Sek Hong Ng and Malcolm Warner. London: St. Martin's Press and New York: Macmillan Press, 1998.
- Xing, Lijuan. "The Rhyme of History: a Transition of Legal Culture in China Crowned by the Criminal Procedure Law 2012." *Asia Pacific Law Review* 23.1 (2015): 31.
- Xu, Guangdong. *The Establishing of San Gang Wu Chang, from Dong Zhongshu dao White Tiger Collections (San Gang Wu Chang de queli he xingcheng, cong Dong Zhongshu Dao Baihuji)*. Beijing: China Book Company, 2014.
- Yan, Hairong. *New Masters, New Servants Migration, Development, and Women Workers in China*. Durham: Duke University Press, 2008.
- Yan, Heping; Chang, Lujun; and Chang Junbo. "Research on the Mechanism of Labour Subcontracting in construction (Jianzhu Shigong Laowu Fenbao Jizhi Yanjiu)." *Construction Management Modernization (Jianzhu Guanli Xiandaihua)* (2004).
- Yan, Huang. "Hubei Exporting 11 Million Migrant Workers in 2011, Making Profits of 15.56 Billion yuan." *Xinhua Net*, February 12, 2012. Accessed October 13 2016, http://news.xinhuanet.com/fortune/2012-02/12/c_111515559.htm.
- Yan, Yunxiang. *Private Life under Socialism: Love, Intimacy, and Family Change in a Chinese Village, 1949-1999*. Stanford, Calif: Stanford University Press, 2003.
- Yan, Yunxiang. *The Individualization of Chinese Society*. (English ed.) New York;

Oxford, UK;: Berg, 2009.

Yang, Bojun, (eds.), *Notes on Lun Yu*. Beijing, China Publishing, 2006.

Yang, Tingzhong, Wang, Wei, Abdullah, Abu Saleh, Beard, Jennifer, Cao, Chengjian and Shen, Mowei. "HIV/AIDS-related Sexual Risk Behaviors in Male Rural-to-urban Migrants in China." *Social Behavior and Personality: An International Journal* 37.3 (April, 2009): 419;

Yngvesson, Barbara. "Inventing Law in Local Settings: Rethinking Popular Legal Culture." *Yale Law Journal* 96 (1989): 1689.

You, Chenjun and Ye, Yizhou. "International Conference on "Modernity and Chinese Legal Culture, Held at Renmin University of China Law School." *Frontiers of Law in China* 8.4 (2013): 862.

Yow, Valerie Raleigh. *Recording Oral History: A Practical Guide for Social Scientists*. CA: Sage Publications. 1994.

Yu, Tak-sun Ignatius; Liu, Yimin; Zhou, Jiongliang; and Wong, Tze-wai. "Occupational Injuries in Shunde City – a County Undergoing Rapid Economic Change in Southern China." *Accident Analysis and Prevention* 31.4 (1999): 313.

Yu, Verna. "Pay Day at Last after Premier Aids a Peasant; Wen Jiabao is quick to end impoverished worker's plight." *South China Morning Post*, October 29 2003.

Yuan Peng and Wang Long, "Migrant Workers: China Boom Leaves Children Behind." *Nature* 529 (England, 2016).

Zelin, Madeleine, Jonathan K. Ocko, and Robert Gardella. *Contract and Property in Early Modern China*. Stanford, Calif: Stanford University Press, 2004.

Zhang, Jieping, and Zhu, Yixin. "Labour Movement in China Requires Independent Trade Unions." *Asia Week* 24.23 (2010). Accessed September 26, 2015, <http://gb.udn.com/gb/blog.udn.com/yensunny/4125202>.

Zhang, Renshan. *Sovereignty, Rights, and Society of Modern China (Jindai Zhongguo de zhuquan, faquan, he shehui)*. Beijing: Law Publication, 2014.

- Zhang, Shuya and Luo, Guoliang, "China's Migrant Workers: How Far from Being Citizens?" *Asian Social Science* 9.1 (2013).
- Zhang, Wenxian. *Jurisprudence (Fa Li Xue)*. Beijing Law Publication (2006).
- Zhang, Yang and Luo, Wei. "Xiaogan Plasterers, Earn 20 Billion Per Year." *Jingchu Net*, February 19, 2012. Accessed May 4, 2015, <http://news.cnhubei.com/gdxw/201202/t1977853.shtml>.
- Zhang Yin. "The CPPC Members Propose to Abolish the Non-Fixed Term Labour Contract." March 2nd 2008. Accessed May 2, 2015, <http://news.sina.com.cn/c/2008-03-02/033515055748.shtml>.
- Zhao, Yaohui. "Leaving the Countryside: Rural-to-urban Migration Decisions in China." *The American Economic Review* 89.2 (1999): 281.
- Zhao, Yun. "China's New Labour Dispute Resolution Law: a Catalyst for the Establishment of Harmonious Labour Relationship?" *Comparative Labour Law and Policy Journal* 30.2 (Winter 2009): 409.
- Zheng, Gongcheng and Huang, Ruolian, *Chinese Migrant Workers: Issues and Social Protections (Zhongguo nongmingong wenti yu shehui baohu)*. Beijing: People Press, 2007.
- Zheng, Zhenzhen; Zhou, Yun; Zheng, Lixin; Yang, Yuan; Zhao, Dongxia; Lou Chaohua; and Zhao, Shuangling. "Sexual Behavior and Contraceptive use among Unmarried, Young Women Migrant Workers in Five Cities in China." *Reproductive Health Matters* 9.17 (2001): 118.
- Zhongqiu Zhang, *Comparative Studies of Chinese and Western Legal Cultures (Zhongxi Falv Wenhua Bijiao Yanjiu)*. Beijing, Law Press, 2009.
- Zhu, Cherrie Jiuhua. *Human Resource Management in China, Past, Current and Future HR Practices in the Industrial Sector*. Oxford: Routledge Curzon, 2005.
- Zhu, Jingwen. "The Socialist Legal System with Chinese Characteristics: its Structure, Features and Trends." *Social Sciences in China* 22.3 (2011): 87.

- Zhu, Jinliang; Xia, Zhaolin; Christiani, David C.; Sorock, Gary S.; Ye, Tingting, Courtney; Theodore K.; Zhu, Taokou; Wu, Qingmin; and Fu, Hua. "Fatal Occupational Events in a Development Area in East China: 1991 to 1997." *Occupational Health/Safety in the World* 42.5 (2000): 267.
- Zhu, Ying, "Major Changes under Way in China's Industrial Relations." *International Labour Review* 134 (1995): 37.
- Zhu, Ying and Campbell, Lain. "Economic Reform and the Challenge of Transforming Labour Regulation in China." *Labour and Industry* 7.1 (1996): 29.
- Zhu, Yunchao. "Workers, Unions and the State: Migrant Workers in China's Labour-intensive Foreign Enterprises." *Development and Change* 35.5 (2004): 1011.
- Zhuang, Wenjia, and Chen, Feng. "Mediate First": The Revival of Mediation in Labour Dispute Resolution in China. *The China Quarterly* 222, 2015: 380.

Selected Laws, Regulations, and Policies cited

Administration on Wage Payment in the construction industry in Guangzhou,

<http://sfzb.gzlo.gov.cn/sfzb/file.do?fileId=E91163A788CF4113B5B8459D20D478B>

7.

Administration on Wage Payment in the construction industry in Guangzhou, amended in 2014,

http://www.gzns.gov.cn/longxue/bmfw_1/ldjy/201504/t20150422_161094.html.

Constitution Law of PRC, http://www.gov.cn/gongbao/content/2004/content_62714.htm.

Corporate Law of PRC,

<http://www.scio.gov.cn/xwfbh/xwfbh/wqfbh/2014/20140826/xgzc31415/Document/1378620/1378620.htm>,

Notice of Human Body Injury Disability Grade,

<http://www.ft22.com/jiandingbiaozhun/6767.html>.

Notice of Construction Department of Guangdong Provincial on Issuing the Guidelines for Construction Accident Insurance in Guangdong,

<http://www.csai.cn/study/203541.html>.

Labour Law of People's Republic of China (1994),

http://www.gov.cn/banshi/2005-05/25/content_905.htm.

Labour Contract Law of PRC,

http://www.npc.gov.cn/wxzl/gongbao/2013-04/15/content_1811058.htm.

Labour Dispute Mediation and Arbitration Law of PRC,

http://www.gov.cn/flfg/2007-12/29/content_847310.htm.

Promoting Labour Employment Law of PRC,

http://www.gov.cn/flfg/2007-08/31/content_732597.htm.

Regulations on Industrial Injury Insurance, amended in 2010,

http://www.gov.cn/zwggk/2010-12/24/content_1772115.htm.

Regulation of Workers' Congress of the State-Owned Enterprises (1986),

<http://fgk.chinalaw.gov.cn/article/xzfg/198107/19810700267984.shtml>.

Rules on Organization of Labour Dispute Arbitration Committees,

http://www.mohrss.gov.cn/gkml/xxgk/201407/t20140717_136057.htm.

Some Opinions of the State Council on Solving Problems of Migrant Workers, 2006,

http://www.gov.cn/jrzq/2006-03/27/content_237644.htm.

Some Opinions of the State Council on Solving the Issues of Migrant Workers, 2015

http://www.gov.cn/zhuanti/2015-06/13/content_2878968.htm.

Some Opinions of the State Council on Further Promoting the Reform of the Household Registration System, 2014,

http://www.gov.cn/zhengce/content/2014-07/30/content_8944.htm.

Some Opinions of the State Council on Further Improving the Service for Migrant

Workers, 2014, http://www.gov.cn/zhengce/content/2014-09/30/content_9105.htm.

Tentative Provisions for Construction Industry and Basic Administration System Reform,

<http://www.people.com.cn/item/flfgk/gwyfg/1984/112501198402.html>.

Trade Union Law of PRC,

http://www.npc.gov.cn/wxzl/gongbao/2001-10/29/content_5277078.htm.

Appendix 1, Undeveloped National Park

Shuangfeng Town is located on the southern side of the Dabie Mountain, north of Jiangnan Plain, in a central part of China. It is 40 kilometers away from the downtown of Xiaogan, and 70 kilometers from Wuhan, the capital of Hubei Province. Shuangfeng Town's predecessor, Shuangfeng State-Owned Forest, was founded in 1958. In April 2001, the Shuangfeng Tourist Resort (town level) was established. It includes one state-owned forest and 9 villages, and the total population is 12,000.

In general, the Dabie Mountain area is famous for its poverty and “tradition” of revolution. The soil is thin, the mountains are rocky, and there is far from enough farmland. Among the vast mountain ranges, it was difficult to access the outside world. Therefore, many local residents have lived in abject poverty for generations. During the time of war, the Dabie Mountain area was a base for the Red Army, and famous for the number of generals born in this area. For instance, in Dawu County on the north to Xiaochang County, 36 senior generals of Chinese People's Liberation Army were born. Dawu is known as one of the “Top Ten General Counties.” The Top 1 “General County,” Hong'an, is also located in the Dabie Mountain region. Sixty-one senior generals were born and grew up in Hong'an County.²¹

²¹ CPC News, “Top Ten General Provinces and Top Ten General Counties (Shida Jiangjun Sheng, he Shida Jiangjun Xian),” accessed May 30, 2016, <http://dangshi.people.com.cn/n/2012/0824/c85037-18823285-1.html>.

Due to its natural conditions, Xiaochang County is one of the 100 poorest counties in China. Although Shuangfeng Town has become a national park, it unfortunately has thus far not been well developed, nor is it well known nationally, or even provincially. Local government lacks the funds to develop infrastructure, and private investors hesitate to finance the area because of the project's breadth and likely duration. In fact, there were no highways that passed Xiaochang County until 2002, while Shuangfeng Town was not directly connected to any highway until 2012. It was not easy for outsiders to access Shuangfeng Town before that. Inside the resort, there are three main lines of natural scenic spots; however, by March 2015, only the "Middle Line" has started to develop. The East and West lines are stuck because of funding shortages. There is only one road in the "Middle Line," while there are no walking paths in many parts of the resort. Accommodation is also insufficient, and of low standard. Hence, Shuangfeng Mountain Resort has not attracted many visitors.

Accordingly, the ticket price of Shuangfeng Mountain Resort is quite low, compared to other national parks in the central part of China. For instance, a ticket for Huangshan Mountain Resort was 230 yuan in 2014, and Lushan Mountain Resort was 180 yuan. Even the ticket for Mulan Mountain Resort was 80 yuan, which is at the other side of the same mountain range of Shuangfeng Mountain, while a ticket to Shuangfeng Mountain Resort was only 25 yuan. In short, the national park of Shuangfeng Mountain Resort has not helped the tourism industry to develop, and has not provided many job opportunities

or income for the rural dwellers. Before 1979, the major income for local families was agriculture; since the 1980s, the main source of family income has come from construction. Due to the geographic conditions of Shuangfeng Mountain, the farmland is exiguous and in small spots. After the adoption of the household contract responsibility system in 1979, each local adult over 18 years old was assigned only 0.4 mu of land, or less.²² Interviewees born in the 1950s and 1960s consistently lamented that they could not feed their families on such small spots of land. Therefore, they must go outside of the mountains to earn extra income. For instance, interviewee Guohui, born in 1964, told me: “I have two brothers. We only got 1.2 mu of land in 1979. It certainly could not feed the whole family. We were always hungry. Once it was allowed, two of us went out to work. Only our elder brother stayed to take care of our parents and farm.”²³

²² 0.4 mu = 266.67 square meters.

²³ Juan Li, (December 23, 2014), Personal Interview.

Appendix 2, Basic Information of Participants

In total, I interviewed 34 local residents of Shuangfeng Town, where all of the interviewees were born and grew up. All of the participants were male, and had migrant experiences. Their major working experiences were in the construction industry (See Table A.1, Basic Information of Participants). Among the 34 interviewees, eleven were born in the 1950s, eight in the 1960s, five in 1970s, three in 1980s, and seven in 1990s. (See Figure A.2, Age Column of Participants)

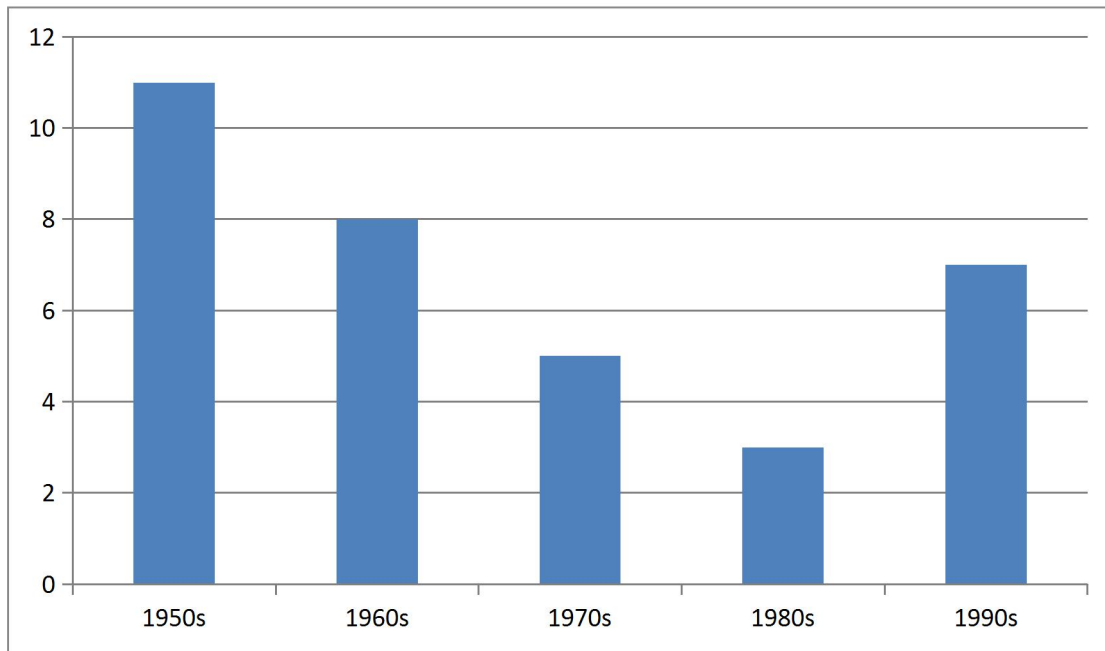
Table A.1: Basic Information of Participants

No	Name	Born Year	Siblings	Education	Farming Experience	Marriage Status	Children
1	Bo	1994	1	Middle School	No	Unmarried	0
2	Youyuan	1993	2	Middle School (quit)	No	Unmarried	0
3	Xiong	1992	1	Middle School (quit)	No	Unmarried	0
4	Zhao	1990	1	Middle School	No	Unmarried	0
5	Kai	1990	1	Middle School (quit)	No	Married	1
6	Wei	1990	1	Middle School	No	Unmarried	0
7	Zhen	1990	1	Middle School	No	Unmarried	0
8	Peng	1989	1	Middle School	No	Unmarried	0
9	Jie	1988	2	Middle School	No	Married	1

No	Name	Born Year	Siblings	Education	Farming Experience	Marriage Status	Children
10	Zhiliang	1981	1	Middle School	Yes, but not much	Married	2
11	Yilong	1978	4	Elementary School	No	Married	2
12	Dayong	1978	2	Middle School	Yes	Married	2
13	Xiaozhan	1975	6	Middle School	No	Married	2
14	Hongxing	1971	2	High School (quit)	Yes, but not much	Married	2
15	Xinghua	1970	3	Middle School	Yes	Married	2
16	Aiguo	1968	3	Middle School (quit)	Yes	Married	2
17	Yafang	1968	2	Middle School	Yes	Married	2
18	Hongbing	1968	2	Middle School	Yes	Married	2
19	Jinshan	1967	4	Middle School	Yes, but not much	Married	2
20	Hongliang	1965	2	Middle School	Yes	Married	3
21	Guohui	1964	2	Middle School	Yes	Married	2
22	Xiaohua	1962	3	High School	Yes	Married	2
23	Jinyun	1961	5	High School	Yes, but not much	Married	2
24	Renhai	1958	4	Elementary School	Yes	Married	2
25	Ruihua	1954	3	Elementary School	Yes	Married	2
26	Chutian	1953	4	Elementary School	Yes	Married	3
27	Jingming	1953	4	Elementary School	Yes	Married	2
28	Pengtang	1952	4	Elementary School	Yes	Divorced	1

No	Name	Born Year	Siblings	Education	Farming Experience	Marriage Status	Children
29	Jianguo	1955	3	Elementary School	Yes	Married	2
30	Shuiqing	1954	2	Elementary School	Yes	Married	2
31	Jinqing	1954	4	Elementary School	Yes	Married	2
32	Jinzhou	1956	4	Elementary School	Yes	Married	3
33	Chengyun	1956	3	Elementary School	Yes	Married	2
34	Decheng	1955	5	Elementary School	Yes	Married	2

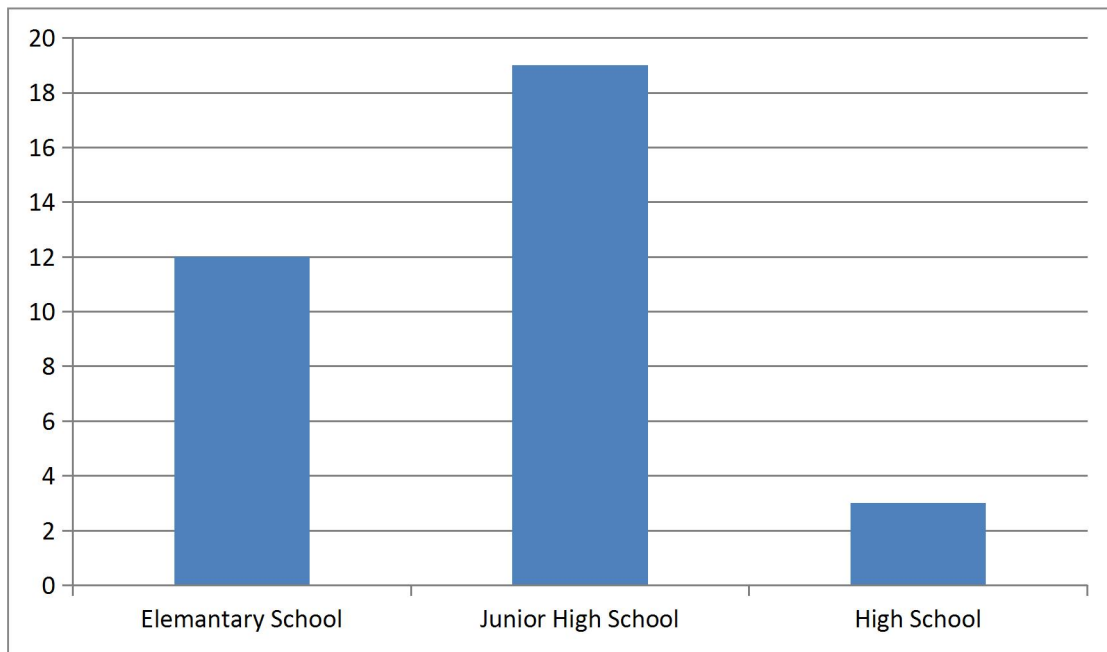
Figure A.2: Age Column of Participants



Among the thirty –four interviewees, three went to high school (two graduated and one quit), twelve only went to elementary school, and the remaining twenty went to middle school (sixteen graduated and four quit) (See Figure A. 3 and Figure A. 4). All of

interviewees born in the 1950s only went to elementary school, and all of those born after 1950s went to middle school or high school, with only one exception. Since the introduction of Nine-Year Compulsory Education in China, elementary and middle school are basically free. However, parents need to pay a tuition fee for high school. Most parents in Shuangfeng Town regarded this as an unnecessary burden.

Figure A.3: Educational Background Column of Participants



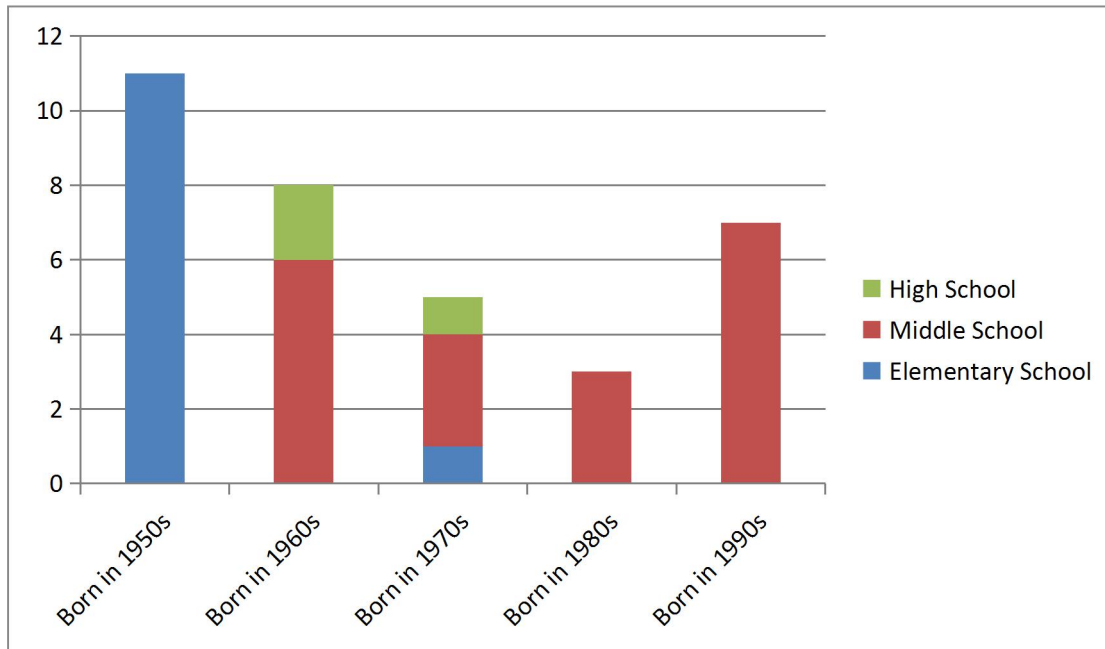
Although, according to some literature in this area, new generation migrant workers have a higher educational background than the older generation,²⁴ the fieldwork of this study

²⁴ Zhang and Zhu, *supra* n. 47; Mingong Net, “Survey Shows that the Migrant Workers Tend to Have Higher Education (Diaocha Faxian Nongmingong Shou Jiaoyu Chengdu You Xiang Gao Xueli Fazhan De Qushi),” May 8, 2015, accessed July 20, 2015, <http://www.mingong123.com/news/30/201106/0f9cb28c64ef1a71.html>.

does not validate this statement. All of the 10 interviewees born in the 1980s and 1990s only went to middle school. When I asked them why they did not go to high school, their answers were quite similar: “I don’t like studying,” or “I get headache when I read.” Three of them explained they were, “forced to quit because of fighting.” It seemed that the rural parents did not have that strong of a desire as most urban parents in China to send their children to university. In this rural area, going to work immediately after middle school is a more popular option than going to high school.

Those three interviewees who went to high school, Hongxing (born in 1971), Xiaohua (born in 1962), Jinyun (born in 1961), all expressed different opinions and attitudes with regard to many issues. Importantly, they were also all project managers. Hongxing was planning to run his own business in Xi’an, and Jinyun had been working as a project manager for large construction companies in Dongguan and Guangzhou for many years. In addition, Xiaohua impressed me with his strong awareness and proactive attitudes in labour disputes.

Figure A.4: Educational Attainment based on Respondent Decade of Birth of Participants



As for the host cities, most interviewees moved around China, chasing “good projects,” which meant high salaries and good payment terms. They do not care about backbreaking workloads, terrible working and living conditions, and long working hours. Their only concern is whether they can get their wages on time, and in full. Most interviewees told me that they had been to many cities, covering nearly half of China. Among the thirty-four interviewees, eighteen preferred to work in the Northeast and Northwest of China. Three preferred to work in the South China. Two interviewees, both born in 1950s, primarily worked in Hubei Province (See Figure A.5). Migrant construction workers had various experiences in different host cities, and these different experiences had impacted their legal culture.

Figure A.5: Working Regions of Participants

