

## I

**Authoritarian Legality at Work***The Workplace and China's Urbanization*

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

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

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

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

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

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

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

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

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

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

## MOTIVATING PUZZLE

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

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

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

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

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

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

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

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

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

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

*The Demographic Challenge: China's Fading Demographic Dividend* 7

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

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

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

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

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

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



*The Security Challenge: Exchanging Land for Work*

9

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

THE SECURITY CHALLENGE: EXCHANGING LAND FOR WORK

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

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

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

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

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