Can authoritarian regimes use democratic institutions to strengthen and solidify their rule? The Chinese government has legislated some of the most protective workplace laws in the world and opened up the judicial system to adjudicate workplace conflict, emboldening China’s workers to use these laws. This book examines these patterns of legal mobilization, showing which workers are likely to avail themselves of these new protections and find them effective. Gallagher finds that workers with high levels of education are far more likely to claim these new rights and be satisfied with the results. However, many others, left disappointed with the large gap between law on the books and law in reality, reject the courtroom for the streets. Using workers’ narratives, surveys, and case studies of protests, Gallagher argues that China’s half-hearted attempt at rule of law construction undermines the stability of authoritarian rule. New workplace rights fuel workers’ rising expectations, but a dysfunctional legal system drives many workers to more extreme options, including strikes, demonstrations, and violence.

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Authoritarian Legality in China

Law, Workers, and the State

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TO MY FAMILY
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In September 2003, I arrived in Shanghai as a Fulbright Scholar to begin a project on the legal mobilization of Chinese workers. Almost as soon as I arrived, I began to hear about plans to revise the 1995 Labor Law, which was the foundational law that facilitated workers’ access to the legal system to protect their rights, by drafting a new law on labor contracts. As my project proceeded, the draft Labor Contract Law (LCL) was released to intense debate and controversy as activists rejoiced in the state’s embrace of more protective laws while some economists and businesspeople warned that the law would adversely affect the Chinese economy and investment. The tumult over the law’s drafting was nothing compared to the law’s implementation during the 2008 Global Financial Crisis when disputes skyrocketed and large-scale strikes shook developmental zones all along China’s coast. As this book was being finished, China’s Finance Minister Lou Jiwei called out the Labor Contract Law in particular for its negative effects on the slowing Chinese economy. Significant revision of the law began to look extremely likely. Some economists even called for its repeal.

This sketch of the legislative progression of the LCL is one way of explaining why this project took so long and evolved in different directions as time passed. It also exemplifies the opportunities and pitfalls of studying contemporary political and social issues in China today. The speed and intensity of change yields enormously interesting social phenomena that need to be studied and understood, for their effects are felt far beyond the Chinese context. At the same time, there is no perfect time to end the story, as the story does not end. Books, on the other hand, have to be finished. I could not have predicted that the LCL would be so
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consequential when I began this study in 2003 nor that the same law would be in danger of significant revision, even repeal, as the study ended. This book can provide only a snapshot of an incredibly important and consequential decade or so when the Chinese state embraced notions of “rule of law” and encouraged Chinese workers to make use of these laws to protect themselves against the onslaught of economic reform and liberalization. I was lucky to start this project at the same time, but things will go on from here. My study ends by necessity now, at a moment in time when China’s commitments to workplace rights and to the notion of ‘rule of law’ are in great doubt. While the fate of the LCL still swings in the balance of China’s economic slowdown and intra-elite conflict, the government’s enthusiasm for legal solutions to labor conflict has also waned.

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Abbreviations

ACFTU All China Federation of Trade Unions
CASS Chinese Academy of Social Science
CCP Chinese Communist Party
CLB China Labor Bulletin
CULS China Urban Labor Force Survey
ECUPL East China University of Politics and Law
EEOC Equal Employment Opportunity Commission
EPL Employment Promotion Law of 2008
FIE Foreign-Invested Enterprise
GFTU Guangdong Federation of Trade Unions
HFTU Hunan Federation of Trade Unions
ILO International Labor Organization
LAC Labor Arbitration Committee
LDMAL Labor Dispute Mediation and Arbitration Law of 2008
LCL Labor Contract Law of 2008
LLMS Labor Law Mobilization Survey
MOHRSS Ministry of Human Resources and Social Security
NGO Non-Governmental Organization
NPC National People’s Congress
OECD The Organization of Economic Co-operation and Development
RCCC Research Center on Contemporary China (Peking University)
List of Abbreviations

RMB  Renminbi (Chinese Yuan)
SCNPC  Standing Committee of the National People’s Congress
SMTU  Shanghai Municipal Trade Union
WJP  World Justice Project