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Management of stability in labour relations

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1. Introduction

Workers occupy a central position in the ideology of the socialist state. In theory they continue to occupy the position of ‘masters’ of the country. They enjoy a range of constitutionally protected labour rights such as the right and duty to work, the right to rest, freedom of association, procession and demonstration, the right to rest and to receive material assistance from the state and society when they are old, ill, or disabled. Women and men enjoy equal rights. Workers’ rights are defined and given specific form by legislation and to a great extent are dependent upon state action for their fulfillment. Private enforcement mechanisms exist, but in important respects are of limited scope and ineffective to pressure for broader structural changes in either economic policy or the labour market.

The right to subsistence and development underpins these rights. In the case of workers this right is articulated as a right to share the benefits of economic reform and development..¹ The 12th Five Year Blueprint on Economic and Social Development (‘12th Five Year Plan’) launched in March 2011 reaffirms that the ultimate objective of economic reform and modernisation is improving people’s livelihood (chapter 2: Fundamental Principles)..² The explicit objective of establishing a moderately well off society (*xiaokang shehui*) is to ensure people’s livelihoods, which, in turn, is understood to be key to underpinning social stability. The Harmonious Society Policy also articulates this idea; that social stability is promoted through enabling all people to share the benefits of economic reform and development..³ The objective of promoting social stability is connected explicitly to all talk of rights protection and may be understood as integral to any analysis of the rights afforded to labour. China’s unions, for example articulated the linkage as one where protection of the right to participate in the benefits of economic development is for the purpose of promoting stability in labour relations..⁴

But the privileged rights-bearing position occupied by workers in theory and the promise that they will have an opportunity to share in the benefits of economic development is not matched by the reality of life for the vast majority of China’s workers. Transformation of the economy has brought about stark and growing inequality in the distribution of benefits of economic growth between government and enterprise on one hand and workers on the other. There is also a vast inequality within the labour market itself, with the lowest levels of the labour market such as migrant workers and labour hire

¹ The Harmonious Society policy was formally adopted at the close of the Sixth Plenary session of the 16th CPC Central Committee meeting on 11 October 2006 in the Resolution on Major Issues Regarding the Building of a Harmonious Socialist Society, announced at <<http://www.china.org.cn/english/report/189591.htm>>.

² reproduced at <http://news.sina.com.cn/c/2011-03-17/055622129864.shtml>, last accessed on 10 June 2011

³ The Harmonious Society policy was formally adopted at the close of the Sixth Plenary session of the 16th CPC Central Committee meeting on 11 October 2006 in the Resolution on Major Issues Regarding the Building of a Harmonious Socialist Society, announced at <<http://www.china.org.cn/english/report/189591.htm>>.

⁴ Wang Quanbao, 全国总工会: 以维权来维稳 [ACFTU: Protecting Stability by Protecting Rights] 4 《中国新闻周刊》 [China Newsweek] 20.

workers obtaining a disproportionately small share of total wages. And, unsurprisingly, the goal of industrial and social stability also remains remote.

Throughout the 1990s and the 2000s there has been a dramatic increase in strikes, go-slows, mass petitioning and even large scale, violent protests (Lee, February 2005). The number of officially recorded labor disputes has risen from 135,000 in 2000 to 314,000 in 2005 (Quan and Li, 2012, 188). Low wage levels and employment insecurity exacerbate other insecurities created by the current model of economic reform including limited access to and cost of education, lack of affordable and reliable healthcare and land and housing insecurity. The systematic failure of China's industrial relations system to protect workers from abusive practices and to ensure a basic level of subsistence and the consequent surge in labour disputes and protests raises the question of the extent to which this increase in protest might develop into broader social and political instability (Li, 1999a, Chung et al., 2006).

This chapter focuses on one aspect of the multi-pronged approach adopted by the Party-state to dealing with the problem of industrial unrest that is; labour unrest as a problem of social order. It discusses official interpretations of the upsurge in labour related protests as both a problem of rights and a problem of order. It discusses the differential interpretations by state agencies of the nature of labour related disputes and protests, the degree of risk they are seen to pose to social order (or vested interests) and the range of responses adopted to deal with labour protests both in the short and long term. We see that few of those responses are to strengthen law and law enforcement. More commonly, both short and long term administrative measures are adopted. In some cases the aim is to rectify the worst abuses, with 'rights protection' serving as a means of promoting social stability. These reforms have included legislative and policy reforms to improve wages and the conditions of work.

However, the oversensitivity of the Party-state to publicly disruptive conduct means that labour protests are often characterized as social order 'emergencies' which require some more direct form of intervention, both to deal with the actual incident, to strengthen the state's early warning mechanisms and its capacity to forestall escalation of disputes. These strategies focus squarely on the problem of restoring order in the short term. Protesting workers thus readily fall within purview of the state's social order protection policies and the mechanisms that have been developed to address problems of crime and other unlawful or socially disruptive conduct. Like the Comprehensive Management of Public Order that preceded today's comprehensive social management policies, these policies pretend to be comprehensive at a time when the pluralization of both state and social interests makes a comprehensive and coordinated, state-led approach to management of social order difficult to achieve. We see deployment of a range of interlinking measures involving mobilisation of Party, state and other agencies to implement a range of administrative measures, which may in some cases improve law enforcement but in other cases circumvent or act as a substitute for formal legal channels of dispute resolution. Finally, where a protest is large and violent, a punitive approach is taken to suppress the protest and punish its leaders.

These features of the Party-state's response to industrial unrest illustrate a number of the broader themes developed in this book. Here I will mention three. The first is the prevailing view of social stability as a form of 'rigid stability' which Yu Jianrong asserts depends on the coercive power of the

state and requires absolute social order. That is, social stability is understood as the existence an 'orderly and non-conflictual' social sphere discussed in the introductory chapter to this volume. Such a form of stability eschews many forms of disruption and protest as pathological and as posing a direct threat to social stability. From there, it is a short step to see these disputes as undermining political stability. From such a standpoint, mass protests and strikes are readily interpreted as a social order crisis. The alternative view of stability posed by Yu Jianrong is that of flexible stability. A functioning legal system provides mechanism for resolution of disputes that in theory enables disputes to be resolved underpins a form of stability Yu Jianrong labels 'resilient stability'. Resilient stability is based in part upon the existence of a functioning legal system, which enables disputes, the vast majority of which are over material interests, to be aired and resolved as part of the ordinary processes of governance. Such a view of stability is less ready to view protests and disputes as a threat to political stability (Yu, 26 May 2009). This chapter traces a number of occasions where protest and labour unrest has been characterized as a social order emergency, illustrating the ready extrapolation from protest to a conclusion that social stability is imperiled.

The second theme is connected to the first, which is the willingness of the Party-state to bypass legal processes at times of perceived social order crisis. This chapter documents a range of administrative measures including; early warning measures, enforcement campaigns and emergency response measures taken at times of perceived crisis. Whilst these measures are not themselves illegal, they often circumvent legal processes, or impose administrative overlays on top of legal processes. These responses perpetuate a political-administrative approach to law making and enforcement and the preference for top-down, state led law enforcement (Biddulph et al., 2012a).

The third theme is the localization of disputes. A consistent approach of the Party-state has been to assign primary responsibility for dispute resolution or dissolution to local governments to ensure that disputes, protests and petitioners do not leave the local area. In particular in the area of labour, the union movement has implemented policies and programs to increase the number of working people organized under the union umbrella and improve delivery of services in part to circumvent other forms of independent organization they may undertake.

2. Disputes, dispute resolution and instability

How is the rising level of labour unrest understood by state actors? The answer to this question becomes a significant factor in determining the range of state responses to protests, which range from from accommodation to violent suppression. Before examining different types of labour unrest it is necessary to set out some brief points about the regulatory framework governing labour relations as it is this framework that shapes, even produces, the different ways in which labour grievances are vented.

The existing regulatory regime has individualised labour relations by way of the labour contract, which in turn has tended to individualise and privatise disputes. Opportunities to exercise collective labour power, either to bargain or to seek redress for grievances, has also been severely circumscribed by the unwillingness and inability of the authorized union movement to act as a strong worker advocate and the state's implacable opposition to attempts to establish independent unions or worker representative

organizations. Given a reasonable opportunity to pursue a grievance, workers have demonstrated a willingness to use legal dispute resolution channels of arbitration and litigation. For example, after passage of the *Labour Contract Law* and the *Labour Disputes Mediation and Arbitration Law* (LDMA), the number of labour arbitration and litigation cases increased dramatically. In fact, after 2008 the number of labour arbitration cases increased to the point that they threatened to overwhelm the capacity of the labour arbitration bureau to deal with them (see an extensive discussion of these points in Cooney et al., 2013). However, there are many grievances which cannot adequately be addressed through individual dispute resolution channels. Wage setting is one. Others involve worker complaints against corrupt misappropriation of enterprise assets by company managers that prejudice the viability of the company and employment and pension entitlements.

Many protests have arisen where workers are laid off due to state-enterprise bankruptcy or re-organisation, without being paid and or without receiving entitlements and pensions. Others relate to low wages, unpaid wages, workplace disciplinary violence and failure to provide medical or accident insurance or compensation. Popular protests such as strikes, sit-ins and petitioning generally share the characteristics of being fragmented, narrowly framed and arising in response to the immediate complaint. Protesters do not generally challenge the legitimacy of the central state or the leadership of the Communist Party of China (CPC) and exclude any expansion of participation by people with similar complaints but from different enterprises. Ching Kwan Lee has labeled this form of fragmented and narrowly framed protest 'cellular activism' (Lee, 2007). Protesters are mostly careful to avoid framing their complaints and demands in a manner that could be interpreted as political (Chen, 2007, 274). At most, protesters might challenge the legitimacy of local government where it is implicated in corrupt dealings of local enterprise managers, as was the case in the Liaoyang Ferro-Alloy Factory dispute (Lee, 2007, 241-2). Many collective actions, even those that are disruptive, are framed as a form of 'rightful resistance'; to stay close to lawful channels of dispute resolution and to employ officially authorised language to legitimate their claims (O'Brien, 1996, 33, Chen, 2007, 255).⁵ These types of protest, which often progress through formal to informal and then back to formal channels of dispute resolution, illustrate the porous boundary between institutionalised dispute resolution and non-institutionalised conflict resolution (Lee, 2007, 231). They also illustrate a significant failing of the current institutionalized dispute resolution mechanisms to provide a final, acceptable resolution to grievances.

From a policing perspective, these large scale public protests, strikes, mass petitioning and other forms of public action are characterized as 'mass incidents', which requires that the government take a leading role in their resolution (Ren, 2005, 49). The police are often called to the frontline to deal with these protests. Many see these protests as being based on a legitimate grievance and even feel some sympathy for the protesters (Chung et al., 2006; Li, 1999b). There are many instances where the police do not use violence to disperse crowds. Police research into mass incidents characterizes this type of conflict as a predictable outcome of economic reform and development. They are seen as conflicts between different interest groups over material interests (Ren, 2005, 49). It is significant that these types of protests are characterized as non-antagonistic contradictions, as in principle they should be

⁵ O'Brien has labeled the range of conduct from non-cooperation, to petitioning and protest as 'rightful resistance' as it does not seek to oppose the state but to elicit its assistance to correct local wrongdoings, O'Brien, 1996: 36-9.

solved without resort to violent suppression and ideally resolved through the use of education and persuasion to defuse the situation. However, when these conflicts become 'confrontational' in form, policing responses are affected (Ren, 2005: 259-63). Many protests are becoming larger, better organised and more violent as the underlying grievances are not satisfactorily resolved (Wang, 9 October 2001). However, police also view the increase of this type of dispute as carrying a high degree of political risk. If they are handled appropriately they can contribute to social stability. If, however, they are handled inappropriately, what is in essence a conflict over material interests has the potential to intensify, to become increasingly confrontational and to seriously undermine social stability (Ren, 2005, 49). This type of incident is seen by the police as being difficult to manage, or 'complex' because of the large numbers of people often involved in different capacities (Ren, 2005: 263-4, Tanner, 2004: 140-2). In protests involving large numbers of people, or which touch on politically sensitive areas or which are confrontational or violent, the boundary may easily be crossed from a protest that is dealt with as a non-antagonistic contradiction to one where the response is to use force. Characterised as a riot or a contradiction which should be seen as essentially antagonistic, employment of state violence to quash the protest is seen as necessary.

There is thus a risk that disputes framed to fall within the bounds of 'rightful resistance' may become characterised as political in nature, or if they become confrontational, may bring down the state's repressive violence on the heads of the people identified as ringleaders, especially where the interests of the local government are challenged.⁶ One of the best known illustrations of a protest framed as 'rightful' that resulted in the use of violence to suppress it was the extended protest by workers in a number of factories in Liaoyang, Liaoning province. It started with those employed in the Liaoyang Ferro-Alloy Factory and culminated in 2002. That enterprise was bankrupted in 2001 following several years of corrupt misappropriation of enterprise funds and assets by the enterprise director. This left little prospect that workers owed back wages, pension payments, welfare, medical and housing subsidies or severance pay would recover their entitlements. Workers at that factory organized mass protests and sit-ins. In addition to demanding their pay and entitlements they also demanded removal of corrupt enterprise directors and the Provincial congressman believed to have been implicated in the corruption (Lee, 2007, 238-243). The crack-down on the protests and those identified as leaders of the protest was harsh. Yao Fuxin and Xiao Yuanling were accused of organizing the unrest and were charged and convicted of subverting state power. They were sentenced to seven and three years' imprisonment

⁶ The Chinese state's insistence on characterising the conduct of leaders of the 2002 protests at the Ferrous Alloy Factory in Liaoning as the criminal offence of subverting state power and refusing to contemplate the alternative interpretation presented by the International Metalworkers Association that Yao Fuxin and Xiao Yunliang were punished by virtue of their role as worker representatives in Case 2189 before the Committee on Freedom of Association illustrates this preoccupation with punishing conduct which disrupts social order, whatever the reason. Case(s) No(s). 2189, Report No. 333 (China): Complaint against the Government of China presented by the International Confederation of Free Trade Unions (ICFTU) and the International Metalworkers' Federation (IMF) accessed at <http://www.ilo.org/ilolex/cgi-lex/pdconv.pl?host=status01&textbase=iloeng&document=1322&chapter=3&query=China%40ref&highlight=&querytype=bool&context=0> and see the discussion of this case in Kent, 2007 199-202

respectively.⁷ This case created an international outcry resulting in a case, Case 2189, being brought to the ILO's Committee on Freedom of Association by the ICFTU and the International Metalworkers Association in respect of the intimidation, arrest and beating of workers accused of leading worker protests in Liaoning, Heilongjiang, Sichuan and Shanxi in 2002. In its interim report, the CFA requested an independent investigation be conducted into allegations of violent police intervention in the protests, torture, beating and mistreatment of worker representatives. They also requested that charges of terrorism, sabotage and subversion be dropped in respect of protests at the Liaoyang Ferro-Alloy Factory. However, China disregarded 'essentially all of [the CFA's] previous recommendations'.⁸ This case is illustrative of China's posture both domestically and internationally to protests that are perceived to touch on politically sensitive issues of social order and independent union organization.

Other large scale violent protests have arisen in the context of accumulated grievances but were never framed as 'rightful'. Two well known recent examples are illustrative. On 6 June 2011, after the serious wounding of a migrant worker and his father by a factory manager after they confronted him seeking payment of wages owed, a violent mass protest erupted in Chaozhou, Guangdong province. Reportedly over 200 migrant workers gathered in front of government buildings and, in the ensuing violent confrontation with local residents and police, cars were smashed and burned.⁹ On 13th June 2011, the South China Morning Post reported that over 1,000 migrant workers had been involved in rioting over a three day period, sparked by harassment by security guards of a pregnant migrant worker peddling goods outside a supermarket in Dandun village, Xintang, Zhencheng, central Guangdong (Lau, 14 August 2012). This protest was subsequently labeled a 'riot' (暴乱) which has provided an official justification for the use of harsh repressive measures against the 'small number of elements who created chaos'.¹⁰ Apparently in dealing with the riot in Xintang, the authorities have been instructed to take severe repressive measures and to make an example of the leaders of the protest (要求严厉镇压, 杀一儆百).¹¹ As we have seen with other major violent incidents, such as the Weng'an Incident, identification of a small number of instigators, enables extreme force to be used, but at the same time attempts, in public at least, to divert attention from the broader nature of the underlying grievance. Where a protest, such as the one that has occurred recently in Xintang, is reclassified as an antagonistic contradiction, serious punishment, or techniques of suppression (镇压) are seen as not only justified but required.

3. Responses: focusing on stability

⁷ Case(s) No(s). 2189, Report No. 333 (China): Complaint against the Government of China presented by the International Confederation of Free Trade Unions (ICFTU) and the International Metalworkers' Federation (IMF) accessed at <http://www.ilo.org/ilolex/cgi-lex/pdconv.pl?host=status01&textbase=iloeng&document=1322&chapter=3&query=China%40ref&highlight=&querytype=bool&context=0> and see the discussion of this case in Kent, 2007 199-202

⁸ Case(s) No(s). 2189, Report No. 333 (China) paragraph 384

⁹ Qiu Quanlin '9 Detained over violent wages dispute' 8 June 2011 China Daily accessed at http://www.chinadaily.com/china/2011-06/08/content_12654074.htm last accessed on 11 June 2011

¹⁰ 广州新塘“暴乱” 高层下令严厉镇压 有人号召撤退罢工 13 June 2011 accessed at <http://boxun.com/news/gb/china/2011/06/201106131100.shtml> Last accessed on 17 June 2011

¹¹ 广州新塘“暴乱” 高层下令严厉镇压 有人号召撤退罢工 13 June 2011 accessed at <http://boxun.com/news/gb/china/2011/06/201106131100.shtml> 17 June 2011

The description above suggests that labour protests arise out of an accumulation of grievances, including the multiple failures of the legal and institutional structures to protect basic living standards of workers. Acknowledging the systematic institutional and legal failings that give rise to these grievances, a range of measures have been adopted to take both short and longer term measures to rectify the worst abuses (Lum, 2006: 8-9). These responses are explicitly aimed at promoting industrial and social harmony and are often framed in terms of rights protection. They suggest that rights protection is seen as serving the primary objective of protecting stability. They include increasing the minimum wage, expanding unionisation of 'vulnerable' groups such as migrant workers, legislative reform to address some of the most glaring deficiencies in the legal regime, improving accessibility of formal dispute resolution mechanisms such as arbitration and litigation, strengthening union programs to focus on 'rights protection', expanding the reach of collective consultation and collective contracting and even experimenting with ways of bypassing the enterprise union in doing so (these programs are discussed in more detail in Cooney et al., 2013, Biddulph, 2012).

However, rights are articulated in a very particular way; as an undertaking by the state to adopt measures to protect subsistence rights and provide an opportunity to participate in the benefits of a 'moderately well-off society'. None of the reforms go so far as to change the basic regulatory framework for labour relations. They preserve the existing characteristics of state-centric regulation and law enforcement, and do not loosen existing constraints on the development of decentralised or coordinating mechanisms, such as collective bargaining. There remains some degree of wariness about expanding private law enforcement, especially about advice and assistance that may be provided to claimants by labour NGOs. One feature of the state's response to perceived crises has been to employ administrative mechanisms to address failures in law enforcement or to deal with instability that arises as a result of those failures. Some supplement the law and others circumvent it (Biddulph et al., 2012a). To the extent they circumvent formal legal processes they weaken long term legitimacy of the law as an institution for social ordering and dispute resolution.

We also see a range of responses which deal with public protests purely as a problem of managing social order. Whilst the police are often the frontline agency called on to deal with protests, other local agencies, including the local government, labour bureau, courts and unions also play a role in pre-empting or preventing escalation of the protest. Police are acutely aware of the underlying grievances which give rise to public protest and are often sympathetic to these claims. In many cases these views shape police responses to dealing with protests. However, their capacity to act on this understanding is limited where the protest becomes confrontational, or where there are conflicting demands by local governments, whose interests are often in conflict with those of workers through their ownership of or collusive relationship with local enterprises (Oi, 1992). But dealing with protests is not limited to police responses to protests. Local residents committees, government agencies and unions have also been tasked with early discovery of discontent. Early warning mechanisms have been established at the local level to discover potential sources of unrest and a range of strategies have been adopted to prevent escalation of those disputes. Coordinated dispute resolution mechanisms such as grand mediation have been established to tackle labour related grievances and to assist in circumventing problems. To this extent there are examples of 'grand mediation' being used as a substitute for collective negotiation of

wages, in cases where workers have taken action to raise wage rates. Where protests become large or violent the armed police and sometimes the army are called in to disperse the protesters and arrest the people identified as ringleaders.

4. Management of stability: early warning and emergency response mechanisms

Labour instability is one of the core concerns of the Party's Protection of Stability Committee. One report suggests the CPC Central Committee's first established a multi-agency stability protection mechanism in the late 1990s to respond to the social unrest arising from restructuring and bankruptcy of state-owned enterprises (Liao, 14 April 2009). It has since evolved into the Central Committee's Protection of Social Stability Work, Leadership Small Group Office (Stability Protection Office). This office, in which the trade unions is also represented, plays a central role in developing labour policy, coordinating social management and coordinating responses to mass incidents, to prevent, minimise or deal with protests. For example, momentum to strengthen establishment of union and Party grass roots organisations in foreign investment enterprises came from Hu Jintao's speech at the Central Committee Stability Preservation Office on 14 March 2008; '*Analysis of the Factors Leading to Instability in Foreign Investment Enterprises in China's Coastal Areas and Recommended Countermeasures*', in which he recommended 'improving legal regulation, strengthening coordination mechanisms between labour and capital, and strengthening establishment of Party and union organs in foreign investment enterprises' (Liao, 14 April 2009). A characteristic of this type of management is the coordination of a range of organisations; state, party and other mass organisations under the leadership of a high level Party committee using tools reminiscent of central planning. It is also characterised by the flexible use of a range of policy, administrative and legal tools to achieve desired outcomes.

- **Responses to perceived crises**

The policies adopted to deal with the destabilising effects of the global financial crisis ('GFC') on industrial relations, particularly between the first quarter of 2008 and the third quarter of 2009, provides a recent illustration of state responses to a perceived crisis.¹² Even though the GFC did not have a deep or lasting effect in China, this outcome was not apparent at the onset of the crisis. The difficulties facing export oriented enterprises during this period gave cover to some enterprises for unlawful and abusive practices such as failure to pay wages, delayed payment of wages, failure to pay overtime and social insurance payments (Yang, 2009, 1). The period 2008 and 2009 thus saw a significant increase in labour disputes, petitioning and mass protests with enterprise closure, wage arrears, with some managers even locking the factory door and running away, leaving large unmet wage and other commitments (Yang, 16 December 2009).

The perceived importance to the government of risks of social instability arising from the GFC should not be understated. In Guangzhou for example, a meeting comprising representatives of political-legal committee of the Party, government, court, procuratorate, lawyers association, industry association

¹² 2009 年劳资矛盾背景：国际金融危机 14 Dec ember 2009 http://news.sina.com.cn/c/sd/2009-12-14/094219255581_2.shtml last accessed 30 May 2011

unions and academia convened on 18 March 2010 in Guangzhou to discuss the impact of labour disputes on social stability. Labour disputes were identified as one of the most serious causes of social instability in Guangzhou. Labour related protests accounted for 38% of all protests in 2008. Labour disputes in 2009 accounted for more than 70% of cases heard by the Number 1 Civil Division of the Guangzhou Intermediate People's Court.¹³

Public attention was focused by a number of well publicised violent mass protests in 2009, such as the protest by workers in July 2009 against the takeover of the Tonghua Iron and Steel Group in Jilin which ended in a senior manager being beaten to death (Canaves, 27 July 2009), the violent protest and kidnapping of an official from the State-owned Assets Bureau during a dispute over privatization and redundancies at the Henan Linzhou Iron and Steel company in August 2009,¹⁴ and the killing by Liu Hanhuang on 15 June 2009 of two Taiwanese managers at the Dongguang Zhanming Metal Products Factory over a dispute arising from his injury at work.¹⁵ Other large scale protests such those against job losses at the Baoding Yimian Cotton Mill and the subsequent march of over one thousand workers toward Beijing in April 2009.¹⁶ and the strike by taxi drivers in a number of cities from November 2008 (Branigan, 24 November 2008) served further to highlight the increasing conflicts in labour relations during that period.

A number of extraordinary measures were adopted in late 2008 to deal with the GFC. In November 2008 MOHRSS announced a temporary freeze on the minimum wage (Yang, 16 December 2009). The second Executive Committee meeting of the 15th ACFTU in December 2008 adopted a program of 'Mutually Agreed Action' to strengthen the union's role in assisting enterprises in difficulty as a result of the GFC, to prevent employee layoffs and to preserve social stability.¹⁷ The *Guiding Opinion on Dealing with the Current Economic Situation and Stabilizing Labour Relations* was issued in February 2009 to set out the measures to be taken during the GFC to stabilise the relationship between employees and employers.¹⁸ MOHRSS was instructed to work with companies to preserve employment and use funds earmarked for unemployment benefits to preserve employment. Employers were encouraged to act in a socially responsible manner and to minimise employee retrenchment. Unions were instructed to encourage

¹³ Guangzhou: Laozi Jiufen Chengwei Yinxiang Shehui Wending Di Yi Yinsu

<http://acftu.people.com.cn/GB/11177287.html> last accessed on 20 May 2011

¹⁴ 河南林刚重演通港事件:工作 20 年只赔 2 万 员工利益谁保证? 17 August 2009

http://digest.icxo.com/htmlnews/2009/08/17/1401195_0.htm last accessed on 3 June 2011

¹⁵ (广东东莞展明五金制品厂)Yang Gengsheng 杀死万恶的资本家? 刘汉黄何以又成网络英雄? Nanfang Daily 18 June 2009 http://opinion.nfdaily.cn/content/2009-06/18/content_5267880.htm last accessed on 3 June 2011

¹⁶ IHLO, Baoding workers' rally: Harbinger of a Long March? <http://www.ihlo.org/LRC/WC/210409f.html> last accessed on 2 June 2010

¹⁷ 大力开展工会与企业、职工的“共同约定行动”团结动员广大职工为促进经济平稳较快发展做贡献 (Vigorously implement the 'Mutually Agreed Action' between Trade Unions, Enterprises and Employees to promote unity and to mobilize the broad masses of workers to contribute to stable and rapid economic development) 30 December 2008 at http://www.npc.gov.cn/npc/xinwen/syxw/2008-12/30/content_1465498.htm last accessed on 28 May 2011

¹⁸ 关于应对当前经济形势稳定劳动关系的指导意见 approved by the State Labour Relations Tripartite Consultative Conference, issued by MOHRSS on 2 February 2009 http://news.xinhuanet.com/newscenter/2009-02/02/content_10748179.htm last accessed on 20 May 2011

workers to cooperate with companies, support flexible working hours, improve productivity and reduce cost. All parties were instructed to work together to implement vocational training programs and set up or expand wages guarantee funds. In particular, where workers were to be retrenched, or where enterprises were in financial difficulty, it required that priority be given to ensuring that wage arrears were paid in full and to preventing labour disputes.¹⁹ The document placed special emphasis on setting up effective early response mechanisms to emergencies in the form of large scale or violent mass incidents; through strengthening information sharing between unions, enterprises and government, and taking concerted action in serious cases.

In some local areas, special measures were adopted to minimise the potential for escalation of disputes involving coordinated responses from all agencies that have a role in labour dispute resolution. For example, from the end of 2007 until the end of 2008 in Jinjiang, Fujian, a city with 5,500 registered small and medium sized enterprises mostly in the footwear, clothing, textiles and food products sectors and a concentration of migrant workers, there was an increase of over 200% in disputes over pay, workers' compensation and labour insurance payments. This increase was attributed to difficulties arising from the changing terms of export trade which were exacerbated by the GFC. To limit the social disruption caused by these disputes the local government and court set up a specialist labour disputes division with an associated labour rights protection centre. This centre comprises a one-stop service staffed by representatives of the government, court, justice department, union, chamber of commerce, industrial and commercial bureau and the police to work together to deal with labour disputes more quickly and effectively, with the motto, 'don't let one migrant worker fail to receive protection of their lawful rights and interests'.²⁰ As in other places, the government established an 'Enterprise Wages Protection Adjustment Fund' to ensure that demands for payment of unpaid wages could be met if they could not be recovered from the employer.²¹

Actions taken during this period of crisis illustrate different aspects of the relationship between rights and stability. First, these measures demonstrate the perceived necessity of suspending some of the earlier measures to improve workers' conditions during a period of crisis. Secondly, the insistence on expanding the use of collective contracts without changing the union's approach to the process of bargaining illustrates important limitations on union rights protection work. In this situation, unions sought to use collective contracts as a mechanism for risk sharing and to elicit worker cooperation in supporting the profitability of enterprises. Finally, in a period of perceived crisis, coordinated top-down administrative means are used to allocate tasks and responsibilities.

- **The enforcement campaign**

¹⁹ paragraphs 4, 5

²⁰福建晋江：劳资纠纷频发催生"劳动争议法庭" 25 December 2008

<http://qingyuan.people.com.cn/GB/14748/8576454.html> Last accessed on 27 May 2011

²¹福建晋江：劳资纠纷频发催生"劳动争议法庭" 25 December 2008

<http://qingyuan.people.com.cn/GB/14748/8576454.html> Last accessed on 27 May 2011 Su and He, 2010 discussing the establishment of 'stability maintenance funds' in an unnamed county in Guangdong

Another striking illustration of the ready resort to coordinated political-administrative responses to address perceived crises was the three year wages campaign waged between 2004 and 2007. This campaign was launched in response to escalating worker protests arising from serious and systemic failure to pay wages, earned and owing to workers in certain sectors of the economy. The impetus for the campaign was systemic and chronic abuse of migrant workers' rights to be paid their wages, particularly in the construction industry. The reach of the campaign ended up being much broader. The campaign in form was modeled on earlier campaigns, extending for a total of three years and divided into annual stages. It was overseen by a specially created Leadership Small Group under the leadership of a Vice-Premier. Performance targets were allocated to all relevant government agencies, to the courts and to mass organizations such as unions, backed up by regular reporting requirements and random inspections to ensure that reported achievements were, in fact, real (discussed in detail in Biddulph et al., 2012b). In requiring that priority be given to passing rules to resolve structural problems and to giving priority to enforcement in this area, the political- administrative nature of the campaign was made explicit. This campaign did manage to overcome barriers to enforcement resulting from lack of resources, lack of will and from the detrimental impact of the 'silo' mentality of government agencies. However, it arguably had a detrimental long term impact on development of stable and robust legal mechanisms for dealing with such problems. (The campaign and these issues are discussed in detail in Biddulph et al., 2012b)

- **Early warning mechanisms**

At the local level, governments and unions have adopted a range of early intervention strategies that seek to deal with disputes early and prevent their escalation. From the early 2000s (Wang, 9 October 2001), the unions have established and head up nationwide tripartite Labour Disputes Early Warning and Emergency Management Organs, with their mission being 'early discovery, early reporting, early involvement, and early coordination' of a response to minimise labour disputes and prevent intensification of a dispute into a mass incident (劳动争议预警和应急机制 Lu, 2009p. 48). Failure by union officials to carry out their responsibilities diligently or to discover and report the 'seeds' of a mass incident will be punished (Sun, 20 June 2001). In 2005 there were reported to be 5088 such organs nationwide (Zhong, 20 August 2006).

As part of their efforts to resolve disputes before they escalate, unions in a number of areas have established complaints hotlines, information centres, sought to improve their handling of complaints received through letters and visits offices, as well as to strengthen mediation (Zhong, 20 August 2006, Lu, 200948, Sun, 20 June 2001). However, unions have played an ambiguous role in dispute resolution, acting as an intermediary between the parties and giving priority to obtaining a return to work over representing worker demands. As many strikes are wildcat strikes, unions often find out about the dispute last (Chen, 2010: 110).

The continuing high level of strikes and violent conflict demonstrates that the early warning mechanism and the regularised dispute resolution channels of arbitration and litigation have failed, in part at least, to resolve labour disputes. The wave of highly publicized suicides at the Foxconn Group Shenzhen plant and extended strikes at the three Honda plants in early and mid 2010 highlighted the inability of unions

to forestall industrial action and the fundamental weakness of unions not organized by the workers themselves (Feng, 2011, 167). They also made very public the crisis of legitimacy facing the unions (Rulliat, 2010).

Where early warning mechanisms fail to prevent a dispute escalating, local governments are responsible for ensuring that it does not intensify. Upon occurrence of a labour related 'mass incident', responsible leaders from the Party, government and union are required to attend in person to supervise the handling and early resolution of the incident. Under the PRC *Emergency Response Law*, local governments have primary responsibility for handling major strikes or protests (Article 7 see also Chen, 2010: 109). Again, failure to respond adequately can result in punishment for the responsible officials, whose performance appraisal depends upon preventing the occurrence of mass incidents (Wang, 9 October 2001, Sun, 20 June 2001). Some mass incidents, especially grievances over failure to pay wages, can be resolved by payment of some, or all, of the outstanding claim. As Su and He have documented, the process of negotiating a settlement in some cases is carried out by the court on an *ad hoc* basis, acting outside the bounds of ordinary litigation procedures (Su and He, 2010).

The extent of the co-operation between government and other agencies illustrated above in establishing special emergency response mechanisms not only to give priority to dealing with labour disputes, and wage disputes in particular, but also to ensure unpaid wages claims can be met, highlights the extent to which wages and labour disputes have become perceived as a problem of social order and much more serious and widespread than the Party-state feels it cannot afford to leave to individually accessed mechanisms to resolve. In fact, the state may have no choice but to intervene as many violent protests may start as a dispute over wages or conditions, but very quickly become public expressions of pent-up anger over long term and broad ranging discrimination and mistreatment.

Multi-agency collaboration is illustrative of the regulatory approach to supervision and enforcement of policies and legal standards which remains concentrated in the hands of state agencies. In situations of crisis the courts, unions and industry representatives are expected to act in strict concert with government and Party agencies and to form a relatively seamless part of the administrative arrangements put in place to deal with the fallout from the GFC. This regulatory model risks creating a vicious cycle where the Party-state concentrates power in its own hands to deal with crises, and in preventing any meaningful empowerment of unions to focus on representation of worker interests, or workers to take action to protect their own rights, ensures that demands will continue to be made to the state to rectify these problems.

- **Reactive strategies: responding to mass incidents**

The continuing high level of strikes, petitioning, mass incidents and violent conflict demonstrates that early warning mechanisms and the use of regularized dispute resolution channels of arbitration and litigation have failed, in part at least, to resolve labour disputes.

When strategies to prevent a protest fail, or simply fail to identify a potential problem, the police, or if the protest is very serious the armed police, are commonly the agency called out to respond. Once this

happens, violence is not uncommon (Chan, 2011). From the late 1990s, there has been a significant increase in the number of mass incidents arising out of labour disputes, with reports of an average annual increase of 30% in the number of labour disputes over the period between 1997 and 2003 (Ren, 2005: 59). In general this type of protest is characterised as ‘non-antagonistic’ in nature, as it relates to conflicts over material interests. However, their confrontational nature has led to a divergence of opinion about the best approach to dealing with them.

Conduct that disrupts public order such as petitioning, strikes and mass incidents may be punished under a range of legal instruments. A wide range of petitioning conduct has recently been classed as ‘abnormal’ if it is not compliant with the forms of petitioning authorised in the 2005 State Council *Regulations on Letters and Visits*. A person or group carrying out ‘abnormal’ petitioning may be liable either to ‘retrieval’ and/or punishment.²² Failure to conform to the restrictive scope of permitted petitioning set out in the 2005 State Council *Regulations on Letters and Visits* renders a person liable to punishment under the *Security Administrative Punishments Law (SAPL)*, or, if the matter is serious, under the *Criminal Law*.²³ They may also be designated as part of the focal population (重点人口) and then subjected to intensive local surveillance (Biddulph, 2007: 116-7, Wang, 2005). Local government retrieval policies and practices have received a great deal of critical attention as they involve imposition of unlawful detention and other unauthorised punishments. Whilst formal legal authority to punish petitioners is only just emerging, police have clear powers to impose administrative punishments on those who engage in strikes and public protests that breach of the 1989 *Law on Assemblies Processions and Demonstrations*,²⁴ or otherwise disrupt public order under a range of powers, including the SAPL, *Criminal Law* and Re-education through Labour (RETL). A person may be subject to a term of RETL for ‘causing a disturbance in a public place that results in serious disorder’.²⁵

The arrest in October 2010 of two executives of the Anyuanding private security company in Beijing and the launch of a six month police crack-down on illegal activities of private security companies threw the practices of private security into the spotlight. The case of Anyuanding illustrates the extent to which private enterprise and the market have penetrated the policing of social order. Local governments anxious to retrieve petitioners before they can blot the social order record of the local government have used a range of coercive retrieval practices. One of long standing was to contract out retrieval work to private security firms who intercepted, detained and forcibly repatriated petitioners for punishment in their home place.

- **Violent protests**

²² Sapio, 2011: 213- 220, For example the 2009 Shenzhen Notice on Handling Abnormal Petitioning According to the Law, jointly issued by the Shenzhen Intermediate People’s Court, People’s Procuratorate, Public Security Bureau and Justice Bureau

²³ MPS 2008 Guiding Opinion on the Relevant Law for Handling Unlawful and Criminal Conduct in Letters and Visits Activities 关于公安机关处置信访活动中违法犯罪行为适用法律的指导意见

²⁴ Articles 28, 29 and 30 provide for the issue of a warning or punishment of up to 15 days administrative detention under the SAPL or punishment under the Criminal Law for carrying out demonstrations in contravention of the law and that disrupt social order

²⁵ MPS Regulations on Re-education through Labour 2002 article 9(3)

There are now significant numbers of cases where an incident triggers widespread and extreme violence. In particular the long term mistreatment of groups of migrant workers by local governments and employers has resulted in large scale violent riots where government buildings and cars are smashed and burned. Whilst some might argue that these are not labour disputes, I would argue that they are quintessentially grounded in the failure to protect basic labour rights. In Guangdong for example, the 2011 Zhencheng and Chaozhou riots involved migrant workers from Sichuan who were able to rally support from large numbers of other Sichuanese workers through the use of new information technology.

Apart from the violence of these protests and the subsequent confrontations with authorities, it is of significant concern to authorities that such a large number of people who had not been involved in the actual dispute, or who were not based in the same town, came to support the protest. Arguably these types of protest differ from the form of cellular activism described by Ching Kwan Lee which are spontaneous protests arising in response to 'local and work unit based' issues (Lee, 2007; 238). Whilst the protests themselves were triggered by a local or work-unit related incident, participation in the riots quickly spread beyond those immediately involved. In the case of Zhencheng, tweets were sent out calling on other Sichuanese to join the protest and many did, or sought to travel to Zhengcheng. Willingness to participate in such a protest could be understood as motivated by solidarity with people from one's home place coupled with a shared antagonism borne of common experience of discriminatory and unfair treatment.

The local state is not unmindful of the dangers that a large population of disenfranchised migrant workers poses to long term social stability. In Guangdong there have been some efforts made to include migrant workers in positions within local government. Such programs remain small and tentative. Much more is required to integrate migrant workers into urban communities. There are other hints that the number of exceptions to predominant form of labour protests described by the model of cellular activism is growing. Research on the organisation of industrial action including strikes in the factories of the Pearl River Delta by Chris Chan and Pun Ngai suggest that the experience of second generation migrant workers working has characteristics of a newly emerging class consciousness. Their research documents the ways in which workers take their industrial disputing experience to other factories and that workers are no longer fragmented into individual factory groups (Chan and Pun, 2009).

Conclusion what is the relationship between rights and stability?

Labour is one of the areas where there is a clear acknowledgment that the failure to protect rights is directly linked to social instability, yet even here we have seen only partial embrace of legal mechanisms as a way of better protecting workers' rights. The opportunity to strengthen private enforcement mechanisms, for example through permitting labour NGOs greater freedom to provide education and litigation support to workers has been largely bypassed. The opportunity to enable adjustment of the interests of labour and capital through reforms that would enable development of more adversarial approaches to collective bargaining has also been put on hold. Relaxing the prohibition on creation of independent unions is beyond the realm of possibilities under the current political system. In dealing with perceived crises such as that posed by the global financial crisis, there has been resort to shorter

term administrative mechanisms that are not unlawful, but are extra-legal, such as establishing local funds to meet demands from migrant workers for unpaid wages.

The extent of the co-operation between government and other agencies illustrated above highlights the extent to which labour disputes are treated more as a problem of social order than of rights. These problems are seen as much more serious and widespread than the Party-state feels it can afford to leave to private mechanisms to resolve. That perception is correct at a number of levels. Currently private interest adjustment and dispute resolution mechanisms cannot adequately address the institutionalized imbalances between labour and capital. Secondly, as many perceive that the ultimate responsibility for their plight somehow lies with the state, either indirectly through failure to establish a trustworthy and fair regulatory regime, or directly through corrupt or other improper relationships between enterprises and local government, local Party and government officials may have no choice but to intervene in disputes when they arise. As we have seen recently in Chaozhou and Zhencheng protests may start as a dispute over wages or harassment for peddling goods in the street, but very quickly escalated into public expressions of pent-up anger over longer-term mistreatment.

Part of the problem may lie in the Party-state's willingness to view all forms of disruption as an emergency. This illustrates the lack of confidence in the existing regulatory framework to deal with conflict. It may be that this lack of confidence is warranted. It may also be that the current stability protection mentality is unable to distinguish between different types of social upheaval, seeing them all as a threat to the political stability. As Professor Yu has explained, desire for a form of 'rigid stability' eschews social upheaval, but ultimately cannot be achieved. The tentative reforms to improve the stability and resilience of the legal regulatory system, that is to promote a model of flexible stability, have not so far at least been equal to the task.

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