
Street as Courtroom: State Accommodation of Labor Protest in South China

Yang Su

Xin He

Drawing on data collected from district-level governments, this article studies how the Chinese state responds to labor protests in South China. It examines both the internal logic and operational patterns of the state response involving the local courts and an assortment of government agencies. Internal documents and interviews reveal an emerging mode of state reaction. In the context of protest, the courts and related government agencies engage protesters on the street, which often grants a favorable resolution. This “street as courtroom” is a result of the weak capacity of the legal system coupled with a government-wide campaign to build a “harmonious society.” These findings compel researchers to reconsider the institutional boundaries of the prototypical court, the outcome of social protest, and the appropriate role of the courts in China.

The last decade and a half has witnessed an upsurge of social protest in China. Statistics show that the number of “mass incidents,” a government term for collective action events, has increased almost tenfold, from 8,709 in 1993 to 87,000 in 2005 (Yu 2007:1). A body of literature has emerged that examines China’s popular protests (Cai 2002, 2006; Chen 2008; Hurst & O’Brien 2002; Lee 2002, 2007; Michelson 2007, 2008; O’Brien 2003; O’Brien & Li 1995, 2006; Unger 2002; Yu 2007). Unmistakable across both the empirical cases and the theoretical constructs is the impact of the state. Few scholars have lost sight of the government, be it as a target, a policy agent in reference to which grievances are

We acknowledge the financial support provided by a GRF research grant (CityU 142209) from the Hong Kong Government for Xin He, and a seed grant provided by the Center for Studies of Democracy at the University of California, Irvine for Yang Su. An earlier version of this article was delivered by Xin He at the University of Wisconsin, Madison; Columbia Law School; NYU Law School; the Comparative Law and Economics Forum 2009; and the 2009 Harvard-Stanford International Junior Faculty Forum. The authors are grateful for the comments from the workshops. Randall Peerenboom, Michael Dowdle, Eric Feldman, Carroll Seron, Sidney Tarrow, Shizheng Feng, and anonymous reviewers of the *Review* provided valuable suggestions on earlier drafts. Warmest thanks go to the officials and judges who kindly agreed to be interviewed. Please address correspondence to Xin He, School of Law, City University of Hong Kong, 83 Tat Chee Ave, Kowloon, Hong Kong; e-mail: lwxin@cityu.edu.hk.

Law & Society Review, Volume 44, Number 1 (2010)

© 2010 Law and Society Association. All rights reserved.

framed, a repressive party, or an actor that shapes the entire landscape of collective action.

Yet as is often the case with scholars of social movements elsewhere, students of Chinese protest tend to share a common approach; that is, gathering data from observations of protest events and interviews with participants. This literature depicts harassment, intimidation, and arrest as commonplace, whether in village protest cases (e.g., Li & O'Brien 1996; O'Brien 2002; O'Brien & Li 2006; Yu 2003) or protests by urban pensioners and laid-off workers (Cai 2002, 2006, 2008; Hurst & O'Brien 2002). The hostile and repressive tendency of the state is also evident in theoretical constructs such as "rightful resistance" (O'Brien 2002; O'Brien & Li 2006) and "repression-concession dilemma" (Cai 2008). This understanding of the state's role is built on empirical work that has two limitations. First, its protest-centered approach is biased toward what activists have to say about state-protest encounters—their frustration, anger, and mistreatment—and misses the story from government agencies. Second, the set of protest cases documented by these early works comes from the protest encounters in which the government was indeed inflexible and repressive (e.g., Cai 2002, 2006; Li & O'Brien 1996; O'Brien & Li 1995, 2006).

A few scholars, however, have begun to document a more dynamic and accommodating state response to protest in China. Lee (2002, 2007) points out the effect that the enactment of new laws has had on the increasing awakening of workers' rights and details the legal maze that disputants go through, often with frustrating results. She notes the contradiction between the ideal of the rule of law—a new legitimating ideology replacing Maoism—and the dire reality of the legal system with its relatively weak powers of enforcement. Some scholars have touched upon the ground-level operations of the government's reaction to conflict. Chen (2004) documents how one arm of the state apparatus, the government-sponsored trade union, aids workers in litigation. Yu (2007) and Gu (2007) each provide a comprehensive review of China's "administration and management system" of "disruptive incidents."¹ Researchers' understanding would be significantly deepened if detailed mechanisms inside the state were documented.

In this article we examine the state's reactions to local protests from the perspective of the state. Drawing on government documents and interviews with officials and staff, we present findings that describe the state's rationale for its response to collective labor disputes. We examine policy rationales, organizational structure, and the government's day-to-day operations, as well as its actions in

¹ Yu uses the term 骚乱事件 (*sao luan shi jian*) in Chinese. By that he means collective action events in general, with or without violence.

response to labor protests. Given that the legal system is marred by inconsistency and corruption, labor appeals filed through paperwork have to go through an arduous and often futile path. Frustrated, some workers bypass the court or government agencies and present their cases directly on the street. Others file arbitration cases but combine them with street collective action. In these confrontations, we find that the Chinese Communist Party (CCP) mobilizes assorted local government agencies to mediate between labor and business. It often does so on behalf of labor interests under the new Party doctrine of a “harmonious society.” Many such actions prove effective, as the government meets protesters halfway and brokers resolutions, often on the spot.

In the remainder of the article, we first introduce our field site, P District, in South China. We then describe the socioeconomic context of P District as well as the larger policy environment on labor issues in China. Drawing from ethnographic data, we next devote three sections to describing the government reaction to protest: (1) the features of labor dispute resolution in the street, (2) the coordination among government agencies, and (3) some speculations on protest outcome. We conclude by discussing the implications of our findings.

The Case Study

The findings reported here are based on data collected in the P District of the G Municipality, in the heart of the Pearl River Delta. According to official statistics, the district’s GNP reached 56,386 yuan per capita in 2006, suggesting that it is one of the most affluent regions of the country (P District Annals Committee 2006:86). However, labor conflicts and disputes are particularly widespread in this region because of the high levels of international industrial investment and the resulting predominance of private firms. This is also a place where millions of internal migrant workers make a precarious living. According to some estimates, one in three internal migrants lives in the delta region, and P District alone had 670,000 registered in 2002 (Lee 2007:161). Long hours of work test the physical limits of workers, and horror stories of managerial mistreatment are anything but surprising (Lee 2007). Of the several types of labor conflicts, the one most relevant to this article relates to unpaid wages and overtime compensation. When employers fail to pay the (already very low) wages on which many migrant workers count for their daily survival, collective actions are easily triggered.

Labor conflicts have been exacerbated by recent changes in the investment environment in the Pearl River Delta areas. Recently

local governments have become more selective in accommodating foreign investments, with their goal now being to transform the labor-intensive industries and upgrade the industrial structure (Barboza 2008). As a result, many enterprises have suffered serious difficulties in business operation, and a significant number of them have closed down.² It is not uncommon for employers, who are usually foreign citizens, to flee the country and disappear, leaving nothing behind with which to compensate workers. The factory buildings, the land, and the raw materials are usually undermortgaged.³ Even if these enterprises leave behind factory buildings and equipment, they also leave behind unpaid bills, rents, and other debts. Aggrieved workers are often left with little choice but to turn to the street to protest.

We examine the government's rationale for its actions in P District through a close reading of internal documents, including policy deliberations, court reports, and judgments. These documents provide four types of data: first, they detail the rationale and practice of various government agencies in handling labor protests; second, they report the concerns and difficulties in resolving collective action incidents; third, they record typical cases including the actions on the side of the protesters and the reaction of the government agencies; and finally, they register the outcomes for some typical cases.

Analysis of documents is supplemented by interviews with local judges, mid-level court officials, officials responsible for the labor and justice bureaus, and officials responsible for legal and security issues at the township level. We asked about the attitude of the court toward taking in cases, the approach or style of the court in adjudicating the cases, and the roles that court participants played in the process. We also asked interviewees how they coordinated with staff from other institutions, especially the stability maintenance office;⁴ the amount of power their office had and the extent to which it was implemented; their personal responsibility and

² According to "The 2008 Investigation Report of the Guangdong Province (Economic Situation Section) issued by the Investigation Center on the Provincial Situation of Guangdong," the number of Sino-foreign cooperative enterprises decreased by 40 percent in 2007. In the same year, 1,600, or 20 percent, of enterprises with Taiwanese investment in Donggua City disappeared (*Qing Han* 2008: Sec. 12).

³ An internal report of the P District Court in Guangzhou, the capital city of Guangdong province, indicates that during the first two months of 2008, partly in the wake of the implementation of the new Labor Contract Law, the number of labor cases filed with the court skyrocketed by 649 percent compared to the same period of the previous year. The number of labor-related mass incidents reached 52, almost one per day, and 1,543 workers and 7.63 million yuan were involved (*Court Work Research* 2008:1, further information available from authors upon request).

⁴ Known as *Weiwenban* in Chinese acronym, it is an ad hoc but powerful umbrella office in charge of coordinating and overseeing the prevention and handling of popular unrest. Its origins date back to the wake of the 1989 Tiananmen Square Movement. This

liability for any negligence or inaction; and their specific tactics to prevent collective action. In total, we interviewed nine officials and judges. Each interview lasted from 30 minutes to one hour, depending on the extent to which the interviewees were involved in addressing collective action. Most of the interviews were conducted in the offices of the interviewees, during summer 2008. Due to the sensitive nature of the topic discussed, we did not record the interviews; instead, we took notes during the interviews and compiled them immediately after the interviews.

Policy Environment

In its transformation to a market economy, China has aspired to regulate the labor sector using “the rule of law.” Previously, labor disputes were handled through various forms of mediation. Now the role of law has become increasingly significant. The state has promulgated a series of laws or regulations, culminating in the enactment of the national Labor Law in 1995 and the Labor Contract Law in 2008. These laws are significant in at least two senses. First, for the first time in the history of the People’s Republic, a set of basic rights for workers has been comprehensively enshrined in statute. These include salaries, social welfare, labor safety and hygiene, and statutory limitations on working hours. Second, these laws clearly outline the process for labor dispute resolution and stipulate the legal consequences of violations (Gallagher 2005).

Actual enforcement of these laws is another matter. On paper, they are impressive, emulating the standards of similar laws in developed countries. Indeed, the 2008 Labor Contract Law is overwhelmingly weighted toward the interests of labor rights. But there is a vivid contrast between these ideals and the impoverished reality of their enforcement. Fieldwork investigations before the implementation of the Labor Contract Law have revealed that a proportion of workers are not given the opportunity to sign labor contracts when they are recruited (Lee 2007). Even in many state-owned enterprises (SOEs), workers’ rights, including compensation for medical expenses and pensions, are far from fully realized in practice (Hurst & O’Brien 2002). While there have been signs that suggest an improving situation since the 2008 Labor Contract Law, the overall imbalance between worker and employer does not seem to be significantly affected.

The sorry state of enforcement is partly due to deficiencies in the law itself. Taking dispute resolution as an example, the relevant laws and regulations provide that most labor disputes must first go

office enjoys a strong political mandate emanating from the Party center’s emphasis on social stability, and veto power over other Party and government agencies.

through a mandatory arbitration process, which is a bureaucratic procedure coordinated by local labor bureaus.⁵ Only if the parties are unsatisfied with the result can they initiate court proceedings. Such a process is plagued by numerous problems, including the difficulty of getting the arbitration awards and court judgments enforced, prohibitively high costs, a short period of the statute of limitations, lack of legal representation, and the potential adverse impact on existing and future employment relationships (Halegua 2008).

The problems also relate to the weak capacity of the state to enforce the law. While the state, at the central level, sets a standard to protect labor rights, local government usually lacks the institutional infrastructure, staff, resources, and determination necessary to enforce this standard. To make things worse, local officials maintain a close, if not downright collusive, relationship with employers and thus will often take their side. This is because foreign and private investment has been an important engine for the development of local economies, and local GDP is used as a crucial criterion for the evaluation of local officials' performance by upper-level government.

Until recently, the state had a long history of repression of social protest in the wake of the well-known Tiananmen protests of 1989. In the past, protests were invariably seen as hostile toward the regime. News reports were banned and organizers jailed (Shi & Cai 2006). This has changed since President Hu Jintao came to power in 2003 and began to promote the idea of the harmonious society as a way to boost state legitimacy. One telling indicator of such a change is that the official term to describe such actions has gone from "mobbing crowds (暴徒)" or "illegal associations (非法集会)" to the more neutral "mass incidents (群体性事件)." The new terminology serves as a signal of depoliticizing the majority of citizen protests as an inevitable fact of life, ending the past taboo that banned any public discussion on the subject.

In December 2008, Zhou Yongkang, the central leader in charge of law and politics in China, emphasized two principles with regard to "mass incidents" ("周永康强调妥善处置群体事件 [Zhou Yongkang Emphasized to Handle the Collective Incidents Considerately]," *Chongqing Evening News*, 18 Dec. 2008, <http://www.cqkx.com/html/200812/18/0724551050.htm> [accessed 3 March 2009]). The first concerns preemption. According to Zhou, local governments "should nip problems at the grassroots level in the bud and reduce the contradictions that would give rise to mass incidents." This principle

⁵ The 2008 Labor Disputes Resolution Ordinance that took effect on April 1, 2008, allows more disputes to be directly taken by the courts, but the overall framework of the institution remains unchanged.

opens up the possibility that protests may be the result of local officials' negligence. The second principle demands that local government agencies appear on the site whenever a protest breaks out. In Zhou's words, they must appear at the "first site" and at the "first moment" ("周永康强调妥善处置群体事件 [Zhou Yongkang Emphasized to Handle the Collective Incidents Considerately]," *Chongqing Evening News*, 18 Dec. 2008, <http://www.cqkx.com/html/200812/18/0724551050.htm> [accessed 3 March 2009]). This principle opens up the possibility that local leaders under whose watch a protest may escalate into a high-profile event may be blamed. Citizens' failure to take to the street becomes unforgivable in the event of an escalating mass incident.

If Zhou outlined the general principles, other recent pronouncements have specifically warned against using violence to crack down on mass incidents. In another high-profile national policy clarification, Meng Jianzhu, the minister of public security of China, admonished the police to limit, or refrain from, using weapons or policing devices (Zhong Xin 2008). A document issued by the CCP Disciplinary Investigation Committee stipulates that a mistake of "indiscriminate use of police force" can be subject to "double dismissals" of official post and party membership for those local leaders found responsible (Li Yajie & Yu Qinghong 2008).

Street as Courtroom

In the gap between the state's rhetorical inspiration of rule-by-law and ineffectual enforcement on the ground, workers cultivate a political space for collective action. This coincides with the changing face of state reaction to social protest. When a myriad of labor disputes is a fact of life, the concern for social stability has pushed the Chinese government to react and also to innovate within the existing political and legal framework. In the absence of independent unions, the Party mobilizes assorted local government agencies to mediate between labor and business. It often does so on behalf of labor interests under the new Party doctrine of the harmonious society. But labor appeals filed through these channels have to go through an arduous and often over-long process. Some frustrated workers bypass the court or government agencies and directly present their case on the street. Others file their arbitration case but combine this with collective action. Many such actions have proven to be effective, as government agencies have met the protesters halfway and brokered them a favorable resolution.

When a group of aggrieved workers take to the street, the phenomenon of street as courtroom is staged. What follows is a

dispute resolution process that differs significantly, from start to finish, from the traditional mode of judicial adjudication.

Courts Proactively Taking the Cases

The Chinese courts step in proactively in these dispute circumstances. An example of this can be seen from a widely reported mass incident in 2005, in which more than 300 workers of the Baoli Gift and Decoration Company in P District gathered on the public road, blocked traffic, and demanded their back pay, immediately after its American legal representative had disappeared (hereinafter referred to as the Baoli case). The director of Civil Division No. 1 of the P District Court arrived on the scene immediately (P Court 2008, further information available from authors upon request). The director soon reached a consensus with other leaders of the local township government that the disputes should be dealt with through legal channels. The court then, on the spot, “opened a green path [fast track] for the case: the case filing division immediately approved the acceptance of the cases” (P Court 2008, further information available from authors upon request). In another dispute involving unpaid overtime for 77 workers at Gaolaida, a hardware and plastic manufacturer (hereinafter referred to as the Gaolaida case), the P court decided to freeze the physical assets, and later the bank accounts, of the employer after the workers initiated labor arbitration proceedings (P Court 2008, further information available from authors upon request). One of the positive lessons extracted from the way this incident was handled, according to the court’s report, was the “immediate intervention” (P Court 2008, further information available from authors upon request). Instead of waiting for the workers to finish the arbitration process and file a lawsuit, as required by law, the court took the initiative to guide them toward a more rational “legal channel” despite the established legal principle of “no reaction until petition filing [*bu gao bu li*].” Before the aggrieved disputants took the initiative to file a lawsuit, the court not only informed them of the availability of legal remedies but also helped them go through the procedure. This practice conforms to the requirements of the G Intermediate Court: For possible disputes affecting social stability, all courts shall “discover early, report early, control early, and handle early, sterilizing unstable factors in their conception stage, achieving the combination of legal effects and social effects” (G Intermediate Court 2005a: n.p., further information available from authors upon request). However, this practice contrasts vividly with the attitude of the courts in dealing with those complicated, difficult, and unenforceable disputes. As has been well documented elsewhere, courts in more developed areas employ

various legal or extralegal techniques and excuses to prevent troubling disputes from being formally adjudicated (He 2007a, 2007b, 2009a, 2009b). The only difference here is that the workers in these cases were prompted to act collectively as a group, while the routine petitioners at the court gate are generally unrelated individuals.

Inquisitorial Adjudication Restored

In the 1990s, China reformed its civil procedure: A more adversarial style of adjudication was adopted such that the parties to the litigation are now required to bear the burden of proof for their claims while the courts and judges assume a neutral role in evaluating the credibility of the evidence. But our findings from P District show a “street courtroom” where government and court practices are inquisitorial. Court officials take the initiative to collect evidence, with the presumptive plaintiffs only playing a supporting role. In the Baoli case, for example, the court reported that “our cadres, with the cooperation of worker representatives, scrutinized all relevant factory buildings of the company scattered around the area, working long hours until 8pm. They ultimately froze two villas of the company, effectively assuring the workers’ feelings” (P Court 2005: n.p., further information available from authors upon request). The courts also act promptly on leads provided by workers involved in disputes. For example, in the Gaolaida case, the court first froze the physical assets of the company, which covered the 0.92 million yuan overtime payment being claimed by the workers. But after the workers then provided information about the company’s cash accounts, the court went on to freeze these instead of the physical assets. The picture of the court’s role differs from one in which individual workers file petitions for back pay or injury compensation, or where the workers themselves are responsible for gathering the necessary documentation about the company and evidence of its wrongdoings (Lee 2007:183).

Procedures Favorable to Protesters

In District P, the courts adjust their normally rigid adjudication procedure to favor workers who are either protesting or are thought to have a tendency to do so. In the Baoli case, the procedures to receive the dispute, together with the asset preservation process, were completed within hours.⁶ The normal statutory procedures were described by the court itself as “obstacles.” In the

⁶ According to the Civil Litigation Law (Amended, 2007) and opinions delivered in the course of its implementation, if creditors provide security they can ask the courts to freeze the assets of the other party, a procedure known as asset preservation. The court can

Gaolaida case, the court not only froze the company's physical assets, but also managed to go after the two cash accounts based on leads provided by the workers (P Court 2008, further information available from authors upon request). For routine cases, security is usually required before an application for asset preservation will be approved, especially in pretrial applications (He 2009a). At the least, one is not supposed to be able to preserve assets until a case is filed, and in most labor disputes, the case cannot be filed until after arbitration. But this requirement becomes unimportant and even dispensable in the street courtroom. With all the government agencies present, all the requirements can be fulfilled immediately, or they can be fulfilled later. Another court newsletter states that the P District Court has implemented a series of new measures to help protect workers' rights in the course of dealing with labor conflicts (G Intermediate Court 2005b, further information available from authors upon request). This includes the introduction of a specific seal for labor cases, thus differentiating them from other types of cases and giving them priority in case filing and adjudication. Unsuccessful petitioners are eligible for a reduction in, or outright exemption from, litigation fees, and labor cases are also given priority in compulsory enforcement (G Intermediate Court, 2005a, further information available from authors upon request).

Outcomes Favorable to Protesters

Most important, the courts appear to try to broker a favorable deal for protesting workers. If the employers have not already fled, or are not expected to flee, the courts will exert pressure on them. In the Gaolaida case, the exercise of the court's discretion to freeze the cash accounts of the company was not based on legal necessity, since physical assets of the same value had already been frozen. It did this simply so that "more pressures will be exerted on the company, which would facilitate the mediation of the case and protection of the workers' rights" (P Court 2007: n.p., further information available from authors upon request). The directors of the P District Court actively communicated with the bosses of the company to urge it to embark on and commit to the success of a judicial mediation with the protesting workers. The purpose of such communication was not to do the company a favor but to emphasize the application of the legal regulations and highlight the fact that the court had frozen the company's cash accounts. The normally collusive relationship between local officials and enter-

also do this if it deems it necessary. Apparently, in cases like this the court takes the initiative to freeze the assets.

prises now gave way to the urgent need to pacify the workers and settle the incident peacefully. When the company cut a preliminary deal with the workers, the court immediately provided the workers with the money that had been frozen in the two cash accounts despite the fact that the enforcement procedure would take at least a few days to complete. Legal documents such as the mediation letters were prepared on the spot and delivered promptly. In its report to the higher-level courts and the Party Committee, the P District Court completely neglected the neutral position that a court is supposed to assume. The report (2005: n.p., further information available from authors upon request) stated that one of the experiences the members of the court had learned from dealing with this dispute successfully was to “exert appropriate pressure to facilitate mediation” and went on to observe that “the key to success was that our directors assertively distributed cash to the workers on the spot.”

If the employers have disappeared, the court takes steps to find alternative funds to soothe the protesting workers. If a closed plant has assets remaining and these are frozen by the courts, then the case will be easier to settle as the courts can simply compensate the workers using the assets. But in most situations of sudden closure, few assets are left: All the moveable valuables, not to mention cash and registered capital, have been carried away or wired by the employers; in some circumstances, even the cars have been sold. In terms of immovable property, the land has often been rented from the rural village collectives, and the factory buildings and machines undermortgaged. That is why the Baoli case, although claimed as a victory by the court, actually recovered only two villas owned by the employer. Such situations give rise to the question: Who is actually going to compensate the workers?

The first “scapegoat” who is usually be dragged into this whirlpool is the owner of the site that the employer has rented. When the boss of the shoe manufacturer Baoshengchang vanished, the first mediation proposal raised by the local Labor Welfare Bureau was that the owner of the site, the Hengjiang Village, should pay 30 percent of the 335,000 yuan owed in unpaid wages (P Court 2006, further information available from authors upon request). If the incidents are still not solved using this approach, the next step would be to involve lower-level government agencies. In the Baoshengchang case, when the villagers learned that the unpaid wages had been paid by the village collective, they became so angry that they also rushed out to the public road to protest. The Shatou Street Neighborhood Office, an agency at the lowest level of government, then promised to take responsibility for all the unpaid wages.

In legal terms, it is clear that the presumptive defendant or the employer who owns the money and assets should pay. When the

employer cannot be traced or is insolvent, that is usually the end of the legal story, but agitated and deprived workers do not know, and do not want to know, about complicated legal relationships such as this. All they want is their money, and they do not care where the compensation comes from. How should courts render their decisions in such circumstances, and on what principles ought these to be based?

We found no explicit laws in this regard. But an internal report by the P Court states that

according to a directive issued by the Guangdong Provincial Government, when the business operator disappears without paying the wages of its employees, labor bureaus at all levels must report to the local government and other relevant agencies, requesting the government agencies in charge (including the government agency of the Chinese partners of a Sino-foreign joint venture and Sino-foreign cooperative enterprises), which also includes those who are only in charge of the property as opposed to the actual business operation, to *dianfu* [pay the wages owed on behalf of the employer]. For those areas without a government agency in charge, the owner who rented out the factory, equipment, or business site shall *dianfu*. Those having real difficulties with *dianfu* are allowed to compensate no less than 30% of the wages owed, subject to the confirmation of the labor bureaus and people's courts (P Court 2005: n.p.; emphasis added, further information available from authors upon request).

This is why in the Baoshengchang case, both the village collective and the street neighborhood office became involved. Needless to say, if these two entities could not solve the problem, the next in line would have to be the local labor bureau or the district government. As money has become an indispensable tool for handling some of these disputes, governments at all levels in the Pearl River Delta area have set aside a specific budget called "fees for social stabilities." The P District government, for example, allocated 0.63 billion yuan in 2005 as fees for matters relating to political-legal issues, stability maintenance, and comprehensive social control (*zonghe zhili*) (P District Annals Committee 2006:75).⁷

This arrangement only serves to illustrate the tension between the principle of the rule of law and the pragmatic need to maintain stability. The irony is that all these problems have occurred after China established a relatively comprehensive legal system. Detailed

⁷ While it is not clear from the number how much was spent on stability maintenance, it is a staggering amount compared to related income and expenditure figures. In the same year, the budgetary income of the whole district was only 3.66 billion yuan, and expenditures on the police, procurates, and courts was 0.61 billion yuan (P District Annals Committee 2006:201).

procedures and substantive rules for solving disputes such as these have already been put in place. In the official account, the court itself cannot avoid using phrases such as “act in accordance with the law” or “to protect the legal rights of the workers.” But from a legal perspective, it is difficult to find a basis for requiring all these scapegoats to dianfu, or bear responsibility as a guarantor. As noted above, a limited liability company is not supposed to be responsible for anything beyond its own assets. Even if one can claim that the government agencies were negligent in supervising and regulating the business, any claim for compensation on that basis could only be established through tort law, rather than an imposition of administrative liabilities. Obviously the government here is spreading the costs, getting funds from other sources where possible, to compensate for the lack of a functional welfare system. Furthermore, this arrangement is not necessarily a good one from a pragmatic viewpoint. In the Pearl River Delta areas, the owner of the site is usually the landowner, which is the rural village collectives; in other words, the land collectively belongs to the villagers. When a village collective is required to dianfu, the interests of the villagers are infringed. As mentioned above, once the inhabitants of the Hengjiang Village learned that their money had been allocated to serve the purpose of stability maintenance, they rushed onto the road to protest (P Court 2007, further information available from authors upon request). As one of our judge informants said, “When the fire in one place is put down, it comes out from another place” (interviewed 10 Aug. 2008). This arrangement is, at best, a temporary cure for a serious problem.

Changed Role of Court Participants

Overall, the court staff who participate in this process do not behave like judges in any traditional sense. Rather, they act like firefighters or combat soldiers. All the available staff members are mobilized, from the top leaders of the courts to the lowest ranked sheriffs, and all the resources, such as vehicles, are set aside. The call for help from the local Labor Arbitration Committees is nothing less than a request for support from a brotherhood division in war, and the whole process of handling it is vividly characterized by one court report as a “battle without smoking guns” (P Court 2006, further information available from authors upon request). This is, however, not a battle between the parties to litigation or even between the state and the employers who have fled without paying, but between the courts (or the state behind the courts) and the protesting workers. The stakes of the battle, from the viewpoint of the courts and state, is the social stability that is being challenged by the protesting workers. The target of the workers also switches

from the employer to the state, which bears the sole responsibility for governing the region. Both sides forget their real enemy but create a new fight between themselves. When the courtroom is moved to the street, the conventional dynamic between court participants is altered completely.

What emerges as the most important factor here is the result that may be achieved through this *modus operandi*. The workers' frustration and feelings of having been cheated and deprived are reassured and their attention diffused, the development of disputes is brought under control, and ultimately the crowds are dispersed and incidents pacified. Or, to use the words of the courts themselves, social stability is maintained.

Coordinated State Agencies as Expanded Court

The courts are by no means the only institution participating in the drama of the street courtroom. Indeed, behind the idea of the street as courtroom is a recently established institution called *Weiwenban*, the Chinese acronym for the Social Stability Maintenance Office under the Party Political-Legal Committee (also see footnote 4). This institution has been set up throughout the country and at all levels of the state. Under the subtitle of "Stability Maintenance Work," the *Guangdong Annals* state that "the leadership group and *Weiwenban* of the provincial Party Committee was formed; the *Weiwenban* worked together with the Political-Legal Committee of the Party of the province. All 18 municipalities and some counties and districts formed the same institution at their levels, staffed with relevant personnel with clearly defined duties" (P District Annals Committee 2006:76). In the P District, all the township governments (street-level neighborhood committees) have set up separate offices of stability maintenance and comprehensive social control (P District Annals Committee 2006:76).

Weiwenban is staffed by two kinds of personnel. One type is drawn from the Political-Legal Committee itself and the other seconded from the courts, police, labor bureaus, justice departments, and so on. These people do not just deal with the routine business of the office, but they also form an information channel and network. To better coordinate with individual state apparatuses, one or more stability maintenance coordinators are designated in each of these institutions. Whenever information is received indicating that a mass incident is imminent or has already broken out, this coordinator can effectively communicate the message to all the relevant leaders in the region. One internal document reporting on the stability maintenance work of the court states that

[We] have perfected the coordinating mechanism not only among courts at different levels, but also among the courts, the Party Committees, the governments, and other relevant agencies, so as to form combined forces. . . . [We] report to the Party Committee and the Political-Legal Committees in time, strengthen the communication and coordination with units such as the police, the Procurator, and the Justice Department, and will appropriately solve the difficulties and problems in this course (G Intermediate Court 2007:3, further information available from authors upon request).

Serious consequences are imposed on top leaders for any inaction, negligence, mishandling, or incompetence in the course of dealing with social stability. A directive issued by the Guangdong Provincial Department of Social Control and Security clearly stipulates that the top leader of the region shall be the person in charge of stability maintenance (Guangdong Provincial Government 2006, further information available from authors upon request). As an internal document of the G Intermediate Court states,

The two levels of the courts have taken the matter of stability maintenance extremely seriously. The number one guy in every court assumes the overall responsibility and the managing vice director assumes the leadership responsibility. Other cabinet members assisted the No. 1 and No. 2. All the heads of the other internal departments assumes the responsibility for their areas, forming a hierarchical system of responsibility. If mass incidents are not handled well, or there is negligence in the preparatory work and/or the process of dealing with the incidents, the top leader will be severely punished or even removed from office;⁸ if an institution does not do its share, its work and performance in other aspects of the year overall will be forfeited [*yi piao fo jue*] (Party Committee of Guangdong Province 2006: n.p., further information available from authors upon request).

Inside the judiciary, the principle is that “the person in charge assumes responsibility.”

Periodical check-ups and specific examinations are launched, realizing relevant rewards and punishments. For those institutions and individuals which are not competent in this regard, publicized criticisms are circulated [*tong bao pi ping*]; for those who are seriously negligent, leading to mass incidents or the escalation of mass incidents with serious consequences, relevant leaders and staff are punished. (G Intermediate Court 2007: n.p., further information available from authors upon request)

⁸ According to *Mingpao News* (22 July 2008), as a result of a mass protest in a county in Guizhou province, all the major leaders of the county were removed, as was the head of the prefecture Party.

These are not merely paper commitments. In 2005, warnings and circulated criticisms were respectively issued to the Shilou and Lingshan township governments of the P District, where significant incidents had occurred (P District Annals Committee 2006:75). With their jobs at risk, all the top officials are under tremendous pressure. They are, however, not allowed to quell protests with brutality, for any deaths could be regarded as mishandling. When a protest was staged in the central part of the Shenzhen Municipality, for example, all the police required was that the protests be confined to the pedestrian pavement so that they would not block traffic (Lee 2007:189), and nobody was arrested. Another example was a strike involving thousands of workers on February 19, 2008, which occurred when a newly launched computer system miscalculated the working hours of a Korean-owned handbag company, Shimen, leading to a delay in workers receiving an increase to their minimum wage (hereinafter referred to as the Shimen case). In the Shimen case, the police did round up eight so-called instigators, but this was done solely as a deterrent to others and they were released the next day.⁹ The P District Court has even distributed “how to” leaflets highlighting the legal channels and remedies for protecting workers’ rights, so that workers can feel comfortable initiating legal lawsuits. The state intends to guide the public into using a legal channel and to ask workers to use their legal remedies. In addition, extralegal measures have been implemented. The Political-Legal Committee of P District launched a series of comprehensive research activities to explore new thoughts, measures, and mechanisms toward improving the level of stability maintenance (Political-Legal Committee of P District 2008, further information available from authors upon request). That is why researchers have witnessed a hybrid mode of treatment, combining both legal and political means of control. On the one hand, the state considers social stability to be its most serious concern, but on the other hand it tries to channel protests through a legal route, even though these two goals are not necessarily compatible.

To see how well-coordinated this system is, one only needs to look at what happens on the ground. When in the Baoshengchang case the villagers and workers blocked all transportation on the Yushan West Road, a major highway in P District, “all the leaders and normal staff of the Shatou Street Neighborhood Office, and policemen of the town participated in the persuasion,” in addition to the leaders of the Labor Arbitration Committee, the Labor Welfare Bureau, and the village heads who were already on the scene (P Court 2007: n.p., further information available from authors upon request). In the Baoli case, when the director of No.1

⁹ Interview with a cadre, Guangdong Province, 28 March 2008.

Division of P Court arrived on the spot, all the leaders of the town were already there. In the Shimen case,

The heads of the township Party Committee, the township government, the township political consultative committee—all three sets of the state—arrived on the spot immediately, and stayed there for the purposes of deploying and coordinating. The township Weiwenban, police, complementary social security guards, militias, and other relevant staff were maintaining order at the scene. Functional agencies such as the labor bureau, worker unions, justice departments, foreign investment management centers, economic activities offices of the township, and district governments participated in mediation. The relevant leaders of the District, all present in person, made important decisions on the spot (H Township Justice Office 2008a:1, further information available from authors upon request).

Understanding Protest Outcome: Some Speculations

When the local government takes a more accommodating approach, what are the implications for the outcome of social protest in China? In this section we propose some preliminary hypotheses, based on our fieldwork investigations as well as on cases collected from newspapers.

Direct Collective Action versus Paperwork Only

The outcome of labor disputes may depend on whether direct collective actions are initiated; our findings suggest that taking collective action assists workers in winning their grievances. When disputes are handled and contained in the established legal channels, they are basically invisible to outsiders and thus will not be regarded as a mass incident. But when collective action occurs, it soon becomes a direct threat to the political careers of local officials. In the long run, the authorities may take steps to improve the effectiveness of the formal institutions so as to reduce such overflow, but the imminent pressures brought to local officials by the collective action certainly increases their responsiveness.

There is some preliminary evidence supporting this hypothesis. In the Baoshenchang case, five worker representatives had originally negotiated peacefully with the P District Labor Welfare Bureau, but the officials had only promised to pay 30 percent of the back pay owed (using funds from the Hengjiang Village) while deferring the rest of the money until the results of the arbitration were known. This proposal was rejected by the workers, and they burst onto the highway that evening. The next day the village head had agreed to pay 50 percent of the back pay, and two days later,

this had gone up to 100 percent (P Court 2006, further information available from authors upon request). In another case, involving an electronics subcontractor for Wal-Mart, the firm outrageously failed to conform to legal requirements: It did not sign labor contracts with workers, pay the legal minimum wages, adhere to the legal overtime wage scale, or contribute to workers' pensions. These practices had gone on for years, and the workers had complained repeatedly and written letters to management and even the local labor bureau. However, nothing happened until the workers organized themselves and marched to the labor bureau and the district government. Eventually a court settlement was reached (Lee 2007:176, 179).

These processes described in our research also contrast with traditional legal channels. In a formal legal proceeding, numerous bureaucratic procedures and legal niceties must be observed. To prove the employment relationship, for example, the worker must present a copy of the enterprise's registration, which is only available from certain government agencies. The statute of limitations can also be easily missed, depending on how the courts play with the dates. The evidence provided by the workers, such as medical bills or work records, can also be contested. All these factors make up a legal labyrinth for complaining workers and create opportunities for employers and judges to manipulate the process (Lee 2007). In addition, such a process can be tortuous and arduous, with workers waiting for months, if not years, to be paid. Even if they go through this Kafkaesque process and are paid eventually, the payment may barely be adequate to cover various costs involved (China Labor Bulletin 2008). But as soon as collective action breaks out, the whole situation may be transformed. The courts in such circumstances become less concerned with their own procedural requirements than with the imperative dictated by the stability doctrine. Legal requirements, according to an internal document, become "legal obstacles" to be gotten rid of as quickly as possible (P Court 2005, further information available from authors upon request). The evidence provided by the workers may then be welcome, and the handling process is measured in days, if not hours. In some cases the back pay is delivered immediately and in cash.

Size of Collective Action Events

The outcome of labor disputes may be related to the size of mass incidents: The larger the protest, the more likely it is to succeed. This may not be just because larger mass incidents are more difficult to quell. Rather, large-scale protest may draw more attention from the media and higher-level officials, and it may be per-

ceived as a threat to social stability. A large, agitated, and enraged crowd is also more difficult to maintain and control and may place local officials in the spotlight of scrutiny and criticism.

For example, in the Gaolaida case, the P District Court stepped in long before the formal litigation process began, and it took assertive action by freezing the company's assets and bank accounts. In part, this response occurred because the disputes involved 77 workers. When thousands of workers collectively demanded back pay because Hejun Toys, a company listed in the Hong Kong stock market, collapsed when its bosses disappeared in 2008, the Zhangmutou township government in Dongguan municipality fully dianfu the back pay, despite the fact that the amount was as much as 24 million yuan (Wen Chong et al. 2009). The central government was alarmed as well (“贵州骚乱余波黔南书记下台 [The Party Boss of Qiannan Sacked in the Wake of Guizhou Collective Incidents],” *Mingpao News*, 22 July 2008, <http://www.mingpaonews.com/20080722/cac1.htm> [accessed 22 July 2008])). Zhang Dejiang, the Vice Prime Minister of the State Council, immediately instructed the local government to “try all the means possible to gather enough funds, adequately hand out back pay, and arrange reemployment for the workers” (*Hong Kong Daily News*, 18 Aug. 2009). The governor and the Party boss of Guangdong province demanded full implementation of these instructions so to “prevent similar incidents from occurring again.” *Yangcheng Evening News*, the official newspaper owned by the G municipal government, openly criticized the local government for not doing their homework (see also “群体事件“脱敏”后,政府和维权者都应自省 [Both the Government and the Rights Defenders Need to Be Reflective After the Collective Incident Was Less Sensitive],” *Dongfang Kuaibao*, 22 Nov. 2008, p. A30). When the number of protesters was not significant, according to news reports, the state indeed rounded up the protesters. As one of our informants commented, “If you have only three people in your pocket, never try to fight. It would be like throwing eggs against a stone; but with 30 people, there is an opportunity.”¹⁰

The Availability of Funds

The outcome may also be related to the availability of funds: The more money the state can maneuver into place, the more likely it is that a collective action will succeed. The rationale for this difference seems straightforward: A government agency is responsible for mass incidents occurring on its turf, and when the careers

¹⁰ Interview, P Weiwenban official, P District, Guangzhou, Guangdong Province, 28 June 2008.

of the officials in charge are at risk, they would be more than willing to use public funds or others' money to bail themselves out. But not all local governments, or government agencies in charge, have enough funds to do so or have enough channels to get the funds. All other things being equal, then, a protest in a rich area seems more likely to succeed, whereas in poorer areas, the state would be more likely to use alternative measures to diffuse protests. After all, when the state does not have sufficient funding in its arsenal, responding to a protest by giving money to the worker is a luxury it cannot afford.

When the disputes are related to a well-functioning company, the state can simply put pressure on the employer to make the necessary compromises. For example, in the Gaolaida case, the court swiftly froze the company's assets. After all, the bill for this would be paid by the employer. But if the company collapsed, leaving workers unpaid, the success of collective actions would depend instead on the availability of other scapegoats, or on the stability maintenance funds of the local government. When Huang, the boss of Gaoming New Times Stationery Company, disappeared, the company owned almost 2.7 million yuan in back pay to 527 workers. As the company only had 250,000 yuan in cash left, the local court required the auction company involved in auctioning the assets of Huang's company to *dianfu* the back pay. The funds obtained apparently helped pacify the workers (*Guangzhou Daily*, 12 Dec. 2008, p. A30). But in the Baoshenchang case, where the company boss also had disappeared, the workers had a difficult time negotiating with the state. One of the reasons for these difficulties was the fact that the landowner, the Hengjiang Village, was one of the poorest villages in the region. The Shatou Street Neighborhood Office, the local low-level government agency, did not have a dedicated budget and thus was unable to find funds for the stability maintenance fees (P Court 2008, further information available from authors upon request).

Visible Organizers

The outcome of mass incidents may also be related to whether there are clear organizers. There are reasons to believe that the availability of leadership is positively associated with the chances of success. For one thing, an organized event tends to be large. For another, when it comes to negotiating, the crowds with leaders may be in a better position than a headless mob. But our research indicates a different effect of leadership. That is, to the extent that the organizers are visible in the contention, it is more likely to invite forceful state repression, hence the protest is in fact more likely to fail. This seems to be rooted in the strategies of the state. When

mass incidents are instigated by a few activists, the state has a clear target and finds it easy to assign a negative label. It is difficult to quell all the participants, but much easier to arrest the activists and thereby deter the rest. An incident can also be neutralized by eliminating its key elements. On the other hand, if incidents break out without any clear or visible organizers, the state has no one to turn to. Random arrests would run the risk of jolting a crowd into rioting.

In the Shimen case, for example, an internal report deemed the strike as instigated by “a few people.” In the subtext of “violating public order,” the police summoned eight workers known to be the possible leaders. This had an enormous deterrent effect—more than 1,000 workers gradually dispersed (H Township Justice Office 2008b, further information available from authors upon request). In another incident in which local residents protested a new highway that was to be built across from their homes, six residents of the community were prosecuted for instigation and disruption of public transportation. A crucial fact was that they used a bullhorn in the street to organize the protesters, clearly establishing themselves as the organizers (“北辰堵路案”开审 [The Hearing of Beichen Traffic Blocking Case Started], *Kunming Daily*, 23 Sept. 2008, p. A05).

In comparison, when the incidents are seemingly spontaneous, the state is more likely to take an accommodating approach to diffuse the conflict. Well-known cases include one in Xiamen. In their protest against a pollution-ridden project, local residents disseminated the time and venue to “have a walk” through cellphone text messages. The project was suspended as a result (“Xiamen Protest on Video,” *China Digital Times*, <http://chinadigitaltimes.net/2007/06/xiamen-protest-on-video/> [accessed 3 March 2009]).

Taken together, the above hypotheses point to some level of effectiveness of protests in China. This will come as news to scholars who lament the usual fate of social protest. A positive outcome to social protest is rare even in democratic societies where freedom of speech is honored. A comparison of the labor conflict handling processes between liberal democracies and China suggests an ironic contrast: In China, where collective protest is not allowed, at least legally speaking, protesters may gain something from the protest, once it is staged.

Implications and Conclusions

The paradigmatic court is conventionally conceived as one that involves “(1) an independent judge applying (2) preexisting legal norms after (3) adversarial proceedings in order to achieve (4) a

dichotomous decision in which one of the parties was assigned the legal right and the other found wrong” (Shapiro 1981:1). But Shapiro (1981) also points out that such a court never exists in reality. He contends that the essence of “courtiness” is a triad involving two disputants calling upon a third party for assistance in achieving a resolution. It would be ideal for the third party to be impartial, but when it takes the form of state authority, social control becomes an added purpose that confounds conflict resolution (1981:17–8). Hence, “in reality there are few if any societies in which courts are so clearly delineated as to create absolute boundaries between them and other aspects of the political system” (1981:1).

Taken together, Chinese institutions that are deployed to respond to popular resistance represent a “court” with spanning boundaries.¹¹ First, one sees the court as organizationally overlapping: The state as the “third party” consists not only of the legal apparatuses such as the court and police department, but also various administrative agencies. A fundamental challenge is posed by ever-increasing social conflict, emerging on the one hand from the new economic order and on the other from an inept and overburdened legal system. When the most urgent political task of the time is “social stability,” the state has to mobilize its entire apparatus to respond. For a local government, leadership performance is measured not so much by economic development as by the successful maintenance of social order.

Second, one considers the courts as procedurally inclusive: The court responds not only to cases filed as paperwork, but also to appeals made in other forms such as street protests. The Chinese courts, for political reasons, give a privileged share of access to cases that are bolstered by protest actions, with a flexible interpretation of procedural requirements. Two factors in contemporary China have deepened the impact of social movements on the responsiveness of the courts. On the one hand, China has begun in recent decades to enshrine the ideal of the rule of law and to pass a series of rights-related laws; on the other hand, the legal system is utterly inadequate in specifying collective rights (Chen 2008), and the court is often placed in a difficult position to solve many disputes (Peerenboom 2009), in addition to the fact that the courts are often corrupt, colluding with local businesses (Lee 2007). When both dimensions—the extent of the rule of law, and the state capacity to enforce the law—are high, citizens may tend to file their case in the courtroom; when both are low, citizens may directly confront their antagonists, taking justice into their own hands; when state capacity is high but the law is inadequate, they work to

¹¹ The term *spanning boundaries* is inspired by O’Brien (2003), who considers Chinese protest as “boundary-spanning.”

influence the legislature to change the law; and finally, when the extent of the rule of law is relatively high, but the state's capacity to enforce is low, citizens may file the case in court but couple this with direct action so as to force a response.¹² China is currently located in the last-named cell of such a scheme, where the court reacts to the influx of cases but is forced to favor those cases that will potentially disrupt the social order.

Third, we consider the court as outcome-discriminating: "Legal" decisions are based not only on their own merits, but also on the threat of associated community disruption. The decision is biased toward those cases that have taken the form of street action, or cases that are coupled with such a protest. This finding is consistent with the literature on social movement outcomes, particularly the utility of disruptiveness on effecting policy change. A long tradition of movement research has found that creating social disruption, that is, the use of comparatively unruly tactics, is a key aspect of success. Starting with Lipsky's (1967) classic work on "protest as a political resource," many analysts have endorsed the idea that success typically depends on the ability of challenging groups to create "negative inducements to elite bargaining" through the disruption of public order. Empirical research largely bears out this contention. Gamson (1975) coined the term *success of the unruly* to summarize his findings that groups that use violence or "nonviolent constraints" tend to have a higher rate of success. For McAdam (1983), protesters need to constantly innovate their tactics to maintain an edge, while Piven and Cloward (1993) propose that rapid expansions in welfare rolls should be seen as a response to violence on the part of the urban poor. McAdam and Su (2002) show that the number of disruptive protests will increase the likelihood of government response.

This article has examined the internal logic and operational patterns of the state in the transition from strict authoritarian control to a more lenient approach. Based on our fieldwork research on collective action in labor disputes, we conceptualize an emerging mode of state reaction. Unlike the stereotypical courts in China refusing to take on difficult cases (He 2007b), the courts here, in coordination with other government agencies, engage protesters halfway on the street and in many cases grants a favorable resolution. We observe that this phenomenon of "street as courtroom" is a result of the weak capacity of the legal system coupled with a government-wide campaign to build a "harmonious society." While this mode of state reaction may be particularly salient in labor protests in which the government is a third party above the two

¹² This discussion is inspired by Tilly's scheme of regime types. He uses state capacity and democracy. We add the rule of law as the other dimension (Tilly 2007).

contending disputants, we also find that its key elements can be observed in other types of protest beyond our research site in south China. Recent policy pronouncements from the central governments and the high-profile incidents reported in newspapers suggest that it has increasingly become a norm for local governments to refrain from violent means and to adopt an accommodating approach. These findings have some important implications for advancing an understanding of protests and courts in China.

The findings on accommodating attitude and “street as courtroom” practices will enrich the existing literature on the Chinese state’s role in contemporary protest. Past scholars have depicted a more confrontational relationship between governmental actors and protesters, notably in the celebrated concept of “rightful resistance” (O’Brien 2002; O’Brien & Li 2006), and the “repression-concession dilemma” (Cai 2008). This is understandable, for the mechanism of state accommodation is less salient on empirical grounds. O’Brien and Li’s work mostly focuses on peasant resistances against corrupt officials in rural communities (also see O’Brien 2003; O’Brien & Li 1995). Cai’s theoretical constructs are based on his work on laid-off workers protesting SOEs or state welfare agencies (also see Cai 2002, 2006). In peasant resistances or laid-off worker protests, the state is directly challenged and normally considers repression as a first option. Only when repression is unfeasible will concessions be made.

In labor protests in South China, our main empirical ground for this article, the local government is not only the authority being challenged, but also the adjudicator. Its interest lies not only in ending protests, but also in doing justice to the protesters who have been mistreated by the delinquent companies. The protesters, occasional violations of law notwithstanding, do not so much confront as appeal to the government. Accommodation is hence a reasonable course of state action, and the local government does not necessarily see repression as a first priority. Under these circumstances, coupled with the public discourse on restraints emanating from the national leadership, accommodation is a salient mechanism in the state’s reaction to protest.

Therefore, focusing on a different set of protest events in a different time, our research, echoed by Lee’s work on labor politics (Lee 2002, 2007), has uncovered a different mode of state response: accommodation. Both accommodation and repression are mechanisms coexisting across all cases of protest in China; one may be more salient than the other in different sets of events in different political climates. Our findings will help contribute to a fuller picture of state action.

The idea of “street as courtroom,” therefore, does not suggest that China is now a protester’s heaven. Authoritarian to its core, the

Chinese government cracks down on any citizen organizing outside government control, including unofficial labor unions. While collective street actions surrounding economic disputes sometimes gain concessions, protests deemed by the Party to have political implications meet with the outright forces of repression. Recent repressions such as the one in Tibet in 2008 echo the memories of Tiananmen in 1989 and the crackdown on the Falungong spiritual movement. The concessions made to workers in South China are ad hoc, local, and fleeting. The workers are not permitted to organize themselves against the future infringement of their interests, so they continue to stage relatively spontaneous street actions to redress their grievances one dispute at a time.

The more tolerant approach emerges in the space between the demand of a “harmonious society” and the reality of a weak legal system to enforce the new laws on book. Local officials take an accommodating approach largely to the extent of whether they can come up with funds to redress the inequities at issue. And this approach is not without peril: The goal of rewarding litigators who combine large-scale and at times unruly street actions may be to contain mass incidents from escalating, but the same response would paradoxically invite more protests in the long run. Sustained stability will not be achieved until the system can channel the majority of social disputes into the institutional framework—that is, the legal framework.

In this regard, the present study also raises questions on the extent to which judicial independence is really crucial for developing countries such as China. Judicial independence, as defined by some leading figures in the newly revived law and development movement, means an independent third party adjudicating disputes solely according to legal rules (Carothers 1998; Shihata 1997). When this notion of judicial independence is invoked, its advocates perhaps emphasize more the function of an independent court in protecting economic transactions and delivering social justice. But when a court faces collective labor conflicts or social justice, whatever its definitions, it has little to do with judicial independence. The local court in China, in its boundary-spanning organization and operation, apparently is far different from the prototype derived from the best practices of Western liberal democracies. The actual court in reformed China is not at all an independent entity with clear boundaries. As a branch of local government, its organization and operation are tightly meshed with other departments, and all are subject to the Party leadership. The courts are simply not in a position to provide an effective remedy with normal legal processes to many of the disputes given the level of development, weak financial states of many companies, low profit margins, and perceived collusions between the manage-

ment and the local government. But all these arrangements have helped contain conflicts that would otherwise disrupt social stability. The end result of “street as courtroom” suggests it is a pragmatic solution to the labor conflicts. Judicial independence, as far as this case study can tell, thus must be understood in this specific context (Ginsburg & Moustafa 2008; He 2004; Peerenboom 2009; Rodrik 2003).

Aside from being a pragmatic solution, “street as courtroom” also exemplifies a dilemma faced by the state. With the deepening of the marketization process, the state has tried to govern the society with law. Specifically in the labor section, it has given more substantive rights to workers in a way to balance the labor-employer relationship. But when the workers cannot vindicate these substantive rights through the established institutional channels, the state, afraid of losing control, is extremely uncomfortable enshrining the rights of strike, association, and demonstration. With maintaining social stability as the most serious concern, the state has to accommodate many such labor protests. Taking the cases to the street has thus become a de facto right for the workers. To solve this dilemma, the state, if still being pragmatic in governing the society, should make further efforts in strengthening the established legal channels. This will help facilitate the process of delivering justice to the workers. The state should also institutionalize the rights of protest. This will not only help contain the conflict within the established channels, but also avoid further challenges to the state’s legitimacy.

References

- Barboza, David (2008) “China’s Ambition Soars to High-Tech Industry,” *New York Times*, 1 Aug., p. A1.
- Cai, Yongshun (2002) “The Resistance of Chinese Laid-off Workers in the Reform Period,” 170 *The China Q.* 327–44.
- (2006) *State and Laid-off Workers in Reform China: The Silence and Collective Action of the Retrenched*. London: Routledge.
- (2008) “Power Structure and Regime Resilience: Contentious Politics in China,” 38 *British J. of Political Science* 411–32.
- Carothers, Thomas (1998) “The Rule of Law Revival,” 77 *Foreign Affairs* 95–107.
- Chen, Feng (2004) “Legal Mobilization by Trade Unions: The Case of Shanghai,” 52 *The China J.* 27–45.
- (2008) “The Missed Collective Power [集体权力的失位],” 2 *Twenty-First Century [二十一世纪]* 4–12.
- China Labor Bulletin* (2008) “Help or Hindrance to Workers,” Research report, China Labor Bulletin, <http://www.clb.org.hk> (accessed 23 April 2009).
- Gallagher, Mary (2005) “‘Use the Law as Your Weapon!’ Institutional Change and Legal Mobilization in China,” in N. J. Diamant et al., eds., *Engaging the Law in China: State, Society, and Possibilities for Justice*. Stanford, CA: Stanford Univ. Press.
- Gamson, William A. (1975) *The Strategy of Social Protest*. Homewood, IL: Dorsey Press.

- Ginsburg, Tom, & Tamir Moustafa, eds. (2008) *Rule by Law: The Politics of Courts in Authoritarian Regimes*. New York: Cambridge Univ. Press.
- Gu, Peidong [顾培东] (2007) "On Dispute Resolution Mechanisms for Abnormal Disputes in Our Society [试论我国社会中非常规性纠纷的解决机制]," 3 *China Law J.* [中国法学] 3–17.
- Halegua, Aaron (2008) "Getting Paid: Processing Labor Disputes of China's Migrant Workers," 26 *Berkeley J. of International Law* 254–322.
- He, Xin (2004) "Ideology or Reality? Limited Judicial Independence in Contemporary China," 6 *Australian J. of Asian Law* 213–30.
- (2007a) "Recent Decline in Chinese Economic Caseload: Exploration of a Surprising Puzzle," 190 *The China Q.* 352–74.
- (2007b) "Why Do They Not Take the Disputes? Law, Power, Politics in the Decision-Making of Chinese Courts," 3 *International J. of Law in Context* 203–25.
- (2009a) "Enforcing Commercial Judgments in the Pearl River Delta of China," 57 *American J. of Comparative Law* 419–56.
- (2009b) "Court Finance and Court Reactions to Judicial Reforms: A Tale of Two Chinese Courts," 31 *Law & Policy* 463–86.
- Hurst, William, & Kevin J. O'Brien (2002) "China's Contentious Pensioners," 170 *The China Q.* 345–60.
- Lee, Ching Kwan (2002) "From the Specter of Mao to the Spirit of the Law: Labor Insurgency in China," 31 *Theory and Society* 189–228.
- (2007) *Against the Law: Labor Protests in China's Rustbelt and Sunbelt*. Berkeley, CA, and London: Univ. of California Press.
- Li, Lianjiang, & Kevin O'Brien (1996) "Villagers and Popular Resistance in Contemporary China," 22 *Modern China* 28–61.
- Li, Yajie, & Yu Qinghong (2008) "《关于违反信访工作纪律处分暂行规定》颁布实施违规用警力处置群体事件将追责 [Preliminary Regulations on Disciplinary Actions on Violations of Xingfang Work' Issued; Undisciplined Use of Police Forces To Be Curbed]," *Haikou Evening News*, 23 July, p. A05.
- Lipsky, Michael (1967) *Protest as a Political Resource*. Madison, WI: Institute for Research on Poverty, Univ. of Wisconsin.
- McAdam, Doug (1983) "Tactical Innovation and the Pace of Insurgency," 48 *American Sociological Rev.* 735–54.
- McAdam, Doug, & Yang Su (2002) "The War at Home: Antiwar Protests and Congressional Voting, 1965 to 1973," 67 *American Sociological Rev.* 696–721.
- Michelson, Ethan (2007) "Climbing the Dispute Pagoda: Grievances and Appeals to the Official Justice System in Rural China," 72 *American Sociological Rev.* 459–85.
- (2008) "Justice from Above or Below? Popular Strategies for Resolving Grievances in Rural China," 193 *The China Q.* 43–64.
- O'Brien, Kevin J. (2002) "Collective Action in the Chinese Countryside," 48 *The China J.* 139–54.
- (2003) "Neither Transgressive Nor Contained: Boundary-Spanning Contention in China," 8 *Mobilization* 51–64.
- O'Brien, Kevin J., & Lianjiang Li (1995) "The Politics of Lodging Complaints in Rural China," 143 *The China Q.* 756–83.
- (2006) *Rightful Resistance in Rural China*. Cambridge, UK: Cambridge Univ. Press.
- P District Annals Committee, ed. (2006) *P District Annals*. Beijing: Fazhi Press.
- Peerenboom, Randall, ed. (2009) *Judicial Independence in China*. New York: Cambridge Univ. Press.
- Piven, Frances Fox, & Richard A. Cloward (1993) *Regulating the Poor: The Functions of Public Welfare*. New York: Vintage Books.
- Qing, Han (2008) "The Tears of Hong Kong and Taiwan Businessmen Will Continue," *Metropolitan Daily*, 22 July, Section 12.

- Rodrik, Dani, ed. (2003) *In Search of Prosperity: Analytic Narratives on Economic Growth*. Princeton, NJ: Princeton Univ. Press.
- Shapiro, Martin M. (1981) *Courts: A Comparative and Political Analysis*. Chicago and London: Univ. of Chicago Press.
- Shi, Fayong, & Yongshun Cai (2006) "Disaggregating the State: Networks and Collective Action in Shanghai," 186 *The China Q.* 314–32.
- Shihata, Ibrahim F. I. (1997) *Contemporary Reform: Essay on Legal, Judicial and Other Institutional Reforms Supported by the World Bank*. Cambridge, MA: Kluwer.
- Tilly, Charles (2007) *Democracy*. New York: Cambridge Univ. Press.
- Unger, Jonathan (2002) *The Transformation of Rural China*. Armonk, NY, and London: M. E. Sharpe.
- Wen, Chong, et al. (2009) "老板走佬基层有责 [Grassroots Liable for Escaped Bosses]," *Yangcheng Evening News*, 14 Jan., p. A23.
- Yu, Jianrong [于建嵘] (2003) "农民有组织抗争及其政治风险—湖南 H 县调查 [The Organized Resistance of Peasants and Its Political Risk]." *战略与管理 [Strategy and Management]*, No. 3, pp. 1–19.
- (2007) "中国的骚乱事件与管治危机: 2007 年 10 月 30 日在美国加州大学伯克利分校的演讲 [Riot Incidents and Control Crisis: Speech at UC Berkeley, October 10, 2007]." *China Elections and Governance*, <http://www.chinaelections.org/NewsInfo.asp?NewsID=118361> (accessed 9 Oct. 2008).
- Zhong, Xin (2008) "公安部长: 处置群体事件慎用武器 [Minister of Public Security: Caution Should Be Taken in Using Weapons When Dealing With Mass Incidents]," *Nanfang Dushibao*, 4 Nov., p. A13.

Statutes Cited

- Civil Litigation Law of the PRC, amended in 2007, effective from April 1, 2008.
- Labor Contract Law of the PRC, effective from January 1, 2008.
- Labor Law of the PRC, effective from January 1, 1995.
- The Mediation and Arbitration Law on Labor Disputes, issued by the Standing Committee of the National People's Congress, effective on May 1, 2008.

Yang Su is an Associate Professor of sociology at the University of California, Irvine. His recent work includes *Mao's Willing Communities: Collective Killings in Rural China during the Cultural Revolution* (forthcoming, Cambridge University Press). He has also published collaborative work on social protest at *American Sociological Review*, *China Quarterly*, *Journal of Asian Studies*, *Mobilization*, and other journals.

Xin He is an Associate Professor at the School of Law, City University of Hong Kong and also a member of the NYU Law School's Global Faculty. He has published widely in the fields of law and society, law and development, and the Chinese legal system, including articles in *Law & Society Review*, *The China Quarterly*, *Law & Policy*, and *American Journal of Comparative Law*. His current research focuses on empirical studies into China's judicial system.