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Collective labour rights and collective labour relations of China

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1.1 POLITICAL AND ECONOMIC BACKGROUNDS

(1.1) After its reconstitution as the People's Republic of China (PRC), China brought about the collectivisation of its enterprises and proceeded to follow the communist command economic model as a path to development. In accordance with this model, all decisions regarding the market were made by the central government in a top-down manner. The highly centralised command economy enjoyed some early success, but its drawbacks gradually became apparent as modern industry took root. "Although lifelong employment and an egalitarian remuneration system were regarded as the key to socialism in Mao's era, they led to overstaffing, lack of work incentives, and low productivity in state-owned enterprises" (Ngok, 2008: 46). Then, during the ten-year Cultural Revolution (1966-1976), development halted. In 1976, China was pushed towards a transition by the passing of Zedong Mao, and years later, the national policy of "reform and opening to the outside world" (*gaige kaifang*) was issued by Xiaoping Deng in the 3rd Plenary Session of the 11th Central Committee of the Chinese Communist Party (CCP). Under the leadership of Deng, China found "the so-called 'third way' between the failed command economies and the capitalist alternative" (Zhu and Fahey, 1999: 173). In 1992, the 14th National Congress of the CCP established the goal of building a "socialist market economy".

(1.2) The aim of this round of economic reform was to stimulate economic growth and eliminate poverty. Various measures were taken to achieve these purposes, including decentralisation of some economic decision-making power by transferring it to the provincial level, replacement of government control with enterprises' right to operate independently, and deregulating markets. In the late 1970s and early 1980s, the de-collectivisation of agriculture began and foreign investment and private and township enterprises also gradually emerged. This reform effort stagnated at the end of 1980s, however, but policies put forward in a speech by Deng during a tour of southern China in 1992 restored the momentum, and state-owned enterprises were reorganised and many state-owned industries privatised. The private sector and foreign investment, being promoted by the Chinese government, began to grow rapidly. At length, the socialist market economy took shape, reaching a milestone in 2001 when China joined in the World Trade Organisation (WTO).

(1.3) In 2003, a change in the central leadership ushered in policy changes as well. Jintao Hu shifted the emphasis towards social justice, social harmony and environmental protection in order to correct the eco-social problems caused by the efficiency-driven economy of Deng's era. Hu put forward what was termed a "scientific concept of development" (*kexue fazhan guan*). This policy required the balanced development of urban and rural areas, of China's eastern and western regions, and it emphasised trade in addition to environmental protection. The Chinese economy suffered during the crisis of 2008, which made clear its reliance on exports. In the aftermath, Hu sought to establish a domestic consumer-driven economy through such measures as scaling back growth in the gross domestic product (GDP) and increasing wages. During Hu's tenure, many regulations and proclamations regarding social welfare and labour protection were issued. Overall, Hu's policies were successful in easing social tensions.

(1.4) Jinping Xi came to power in 2013 and has since been working to address the issue of income inequality in China. Following Hu, Xi has continued to rein in the pace of economic development; thus annual GDP growth was reduced to 6.7% in 2016, the lowest rate in 26 years.¹ Since 2013, Xi has issued several requests for increases in the minimum wage and other measures intended to foster harmonious labour relations. Enormous effort has also been invested in an anti-corruption campaign designed to combat collusion between local governments and businesses.

1.2 THE EVOLUTION OF LABOUR RELATIONS

(1.5) The change from a planned economy to a socialist market economy in China has generated repercussions in labour relations, in particular in the emergence of collective labour actions (Chang and Brown, 2013: 104; Chang, 2013a: 92; Brown, 2016). According to the definition of Chang and Brown (2013: 104), "collective labour relations refers to the social relationships generated through processes of consultation and negotiation, over working conditions, labour standards and other employment issues, between, on the one hand, the workers' collective or their representatives and, on the other hand, the employers or employers' organisation. It encompasses collective bargaining, collective disputes and employee participation in management". Viewed from this perspective, four periods can be distinguished in the evolution of labour relations in China (also see Chang 2013a; 2015: 20; 2016a; Chang and Brown, 2013; Zou 2014).

1 The data quoted here are from the National Bureau of Statistics of China, available at http://www.stats.gov.cn/english/PressRelease/201701/t20170120_1455922.html, last visited 17 July 2017.

(1.6) The first of these periods began in the late 1970s and ended around 1990. A labour contract system was placed on the legislative agenda following the 1983 Notice of the Ministry of Labour and Personnel for Actively Promoting Labour Contract System (*laodong renshi bu guanyu jiji shixing laodong hetong zhi de tongzhi*). State-owned enterprises were given some freedom to operate independently in an effort to decentralise the economy and stimulate development, pursuant to The Temporary Rule of State Council on Further Enlarging Autonomy Rights of State-owned Industries and Enterprises (*Guowuyuan guanyu jinyibu kuoda guoying gongye qiye zizhuquan de zanxing guiding*, 1984). The emergence of the non-state economy (i.e. the privately- and foreign-owned economy) promoted a diversification of employers.

(1.7) The second period lasted from roughly 1990 to 2000. The policies announced by Deng in 1992 increased both the extent and the pace of economic reform in China. During this period, state-owned enterprises were, as mentioned, compelled to undergo re-organisation. The former tradition of lifelong employment relations – or “iron rice bowl” (*tiefanwan*), to use the Chinese expression – was gradually eroded, and along with it lifetime social benefits. Many workers were made redundant in 1998 to pave the way for a modern enterprise system. Contractual employment relations became the norm, though in the absence of written contracts. The ownerships of enterprises become increasingly diversified during this period. Rural migrant workers were released from the land and began to become involved in the market economy on a large scale.

(1.8) The third stage in the evolution of modern labour relations in China extended from the beginning of 2000s to 2008. China’s accession to the WTO in 2001 escalated the reform of labour relations, which became more complex owing to the boom in the non-state economy and included the revelation of conflict between individual workers and industrial employers. As Lee (2009: 2) reported, in 1978, almost all workers worked in public sector or on rural, collective-owned farms, but by 2005 more than 80% of employment was in the non-state economy. This period witnessed the building of a legal framework to regulate the marketization of labour relations and resolve labour disputes. Individual labour relations in particular were highly regulated. The 2008 Labour Contract Law represented a large-scale effort to protect individual rights. While it has to be sure often been enforced loosely, this legislation certainly made Chinese workers more aware of their rights, as the number of labour disputes increased dramatically, from 48,121 in 1996 to 693,465 in 2008.²

2 The source of the data is the *China Statistical Yearbook*, which is compiled by the National Bureau of Statistics of China. The electronic version of this source can be found at <http://www.stats.gov.cn/ENGLISH/Statisticaldata/AnnualData/>, last visited 17 July 2017.

(1.9) In 2008, the transition from individual to collective labour relations began as a result of the top-down reform and the growth in the labour force (for further explanation, see Chang 2013a: 100-104; Chang and Brown, 2013: 109-110). A spontaneous strike by workers at the Honda Foshan plant in Guangdong in 2010 was a turning point. Rather than merely venting their rage (e.g. by breaking machines), the striking workers pursued a rational strategy, demanding higher salaries. This approach represented a marked improvement over earlier strikes, most of which were triggered by such rights-based labour disputes as wage arrears. The Honda strike, together with the near-contemporary suicides of several Foxconn workers, challenged the dominant image of the Chinese worker as “docile, diligent and dirt cheap”.³ The Chinese government also responded to the strike rationally by defining it as a “labour dispute” and encouraging dialogue between Honda and the workers. With the help of local governments, non-governmental organisations (NGOs) involved in labour, and scholars, an agreement was reached (see Chan and Hui, 2012; Lyddon *et al.*, 2015). Following this strike, greater effort was invested in trade union reform and collective bargaining. The “two universal” (*liangge pubian*) policy indicated the determination of the national union to promote collective agreements. Subsequently, following the adoption of the Rainbow Plan for Further Promoting the Implementation of the Collective Contract System (*guanyu shenru tuijin jiti hetong zhidu shishi caihong jihua de tongzhi*) in 2010, collective bargaining contracts came to cover 60% of enterprises in China in 2010 and 80% by 2011.

1.3 THE TENSION BETWEEN RELEVANT LEGISLATION AND COLLECTIVE LABOUR RELATIONS

(1.10) The transition from individual to collective labour relations has posed a challenge to labour law, which was mainly designed to govern individual labour relations and to protect individual rights. In China, collective rights have not been adequately protected (as discussed further in chapter 2). The tension between law and collective labour relations can be clearly observed, one example being the increasing number of collective labour disputes.

(1.11) Collective labour disputes in China include those involving more than 10 workers with shared grievances and those arising in connection with collective labour contracts (Article 7 of the Law of the People’s Republic of China on Labour-dispute Mediation and Arbitration, 2008; Article 5 of the Rules of Handling Cases Related to Labour and Human Resources Labour Disputes Arbitration, 2017). Two categories of regulatory mechanisms for resolving collective labour disputes pursuant to the present legal system co-exist (similar categorisation, see Ye, 2016: 254). The first concerns direct

3 The Economist (2010), “China’s labour market: The next China”, available at <http://www.economist.com/node/16693397>, last visited 17 July 2017.

regulatory procedures, such as arbitration and litigation, and the second deals with indirect regulatory procedures, specifically dialogue between industrial actors such as collective bargaining, trade union activities and workers' collective actions. Statistics, both official and unofficial, serve to illustrate this tension.

(1.12) The numbers for disputes involving arbitration and litigation procedures have been compiled in the *China Statistical Yearbook*. Figure 1 demonstrates the numbers of collective labour disputes and of workers involved from 1996 to 2008: collective disputes increased nearly six-fold from 3,150 to 21,880, while disputes involving workers increased from 92,203 to 502,713.⁴ Figure 2 illustrates the number of labour disputes (both individual and collective) and workers involved and sheds significant light on changes in the nature of these disputes. In this case, the increase was nearly fifteen-fold over a longer time period, from 48,121 in 1996 to 813,859 in 2014, while the number of workers involved increased from 189,120 in 1996 to 1,159,687 in 2015, with a pronounced spike in 2008, possibly owing to the implementation of the Labour Contract Law that went into effect in that year.

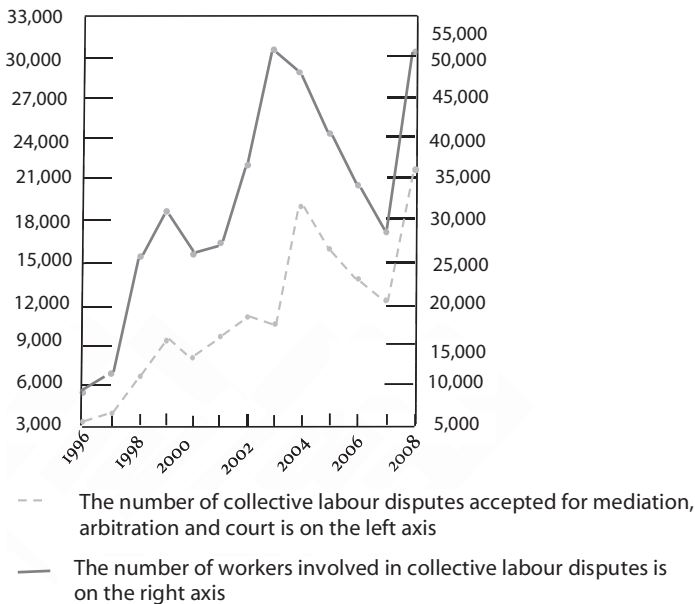


Figure 1: The number of collective labour disputes and workers involved (1996-2008)

Source: *China Statistical Yearbook*

4 There are no clear regulations stating that Chinese judges and arbitrators are obligated to define a labour dispute that involves more than 10 workers sharing a claim as a collective dispute. In practice, these labour disputes are usually split up into smaller cases (Chen and Xu, 2012: 93). For these reasons, the data collected by *China Statistical Yearbook* does not accurately reflect the status quo in China. Also for these reasons, the tendency in collective labour disputes since 2008 has been to diverge from other sorts of labour disputes. Hence, the official data of collective labour disputes post-2008 was not worth referring to.

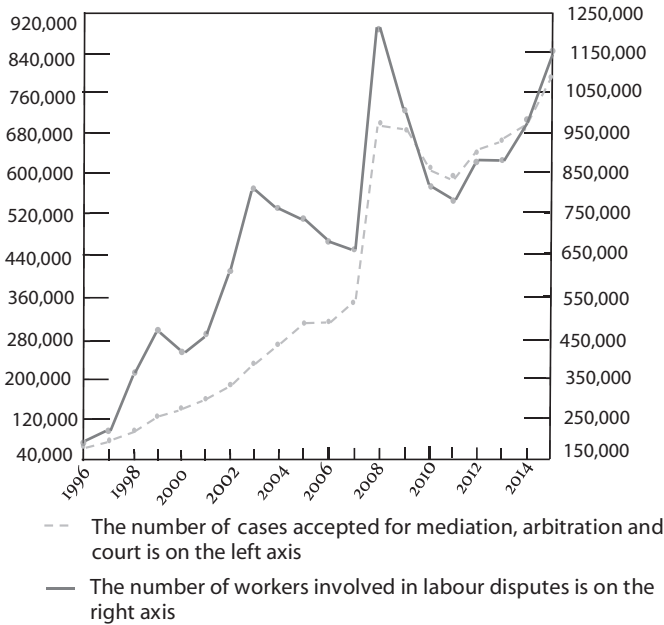


Figure 2: The number of labour disputes and workers involved (1996-2015)

Source: China Statistical Yearbook

(1.13) However, the official statistics fail to provide exact numbers about strikes in China,⁵ in part because many collective labour disputes have been settled through the interference of an administrative power. For instance, the government has often looked to the streets as courtrooms of a sort for resolving industrial actions (Su and He, 2010). It is therefore not easy to enumerate the number of collective labour disputes that have not issued in a judicial procedure. Figure 3 offers two unofficial records from websites in an effort to fill this gap. The website, called *China Strike*,⁶ provides valuable information on strikes for the period from March 2004 to December 2012; the other, *Strike Map*,⁷ is a well-recognised and constantly up-dated record of strikes that have taken place since 2011. These two resources complement each other, and their figures for 2011 and 2012 overlap.

5 Strikes mentioned in this thesis refer to all collective actions undertaken by workers including but not limited to forms of sit-ins, work stoppages, demonstrations, marches, and protests.

6 The website of *China Strike* is <https://chinastrikes.crowdmap.com/main>, last visited 17 July 2017.

7 The records available on *Strike Map* are in both English and Chinese. The website is <http://maps.clb.org.hk/strikes/en>, last visited 17 July 2017.

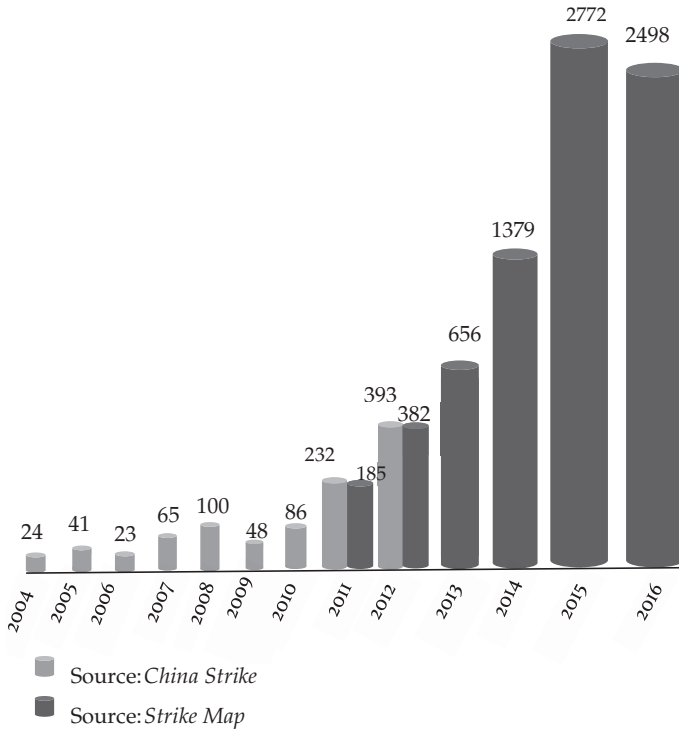


Figure 3: The number of worker collective actions (2004-2016)

(1.14) Before 2010, the number of worker collective actions had increased slowly, with a clear uptick from 2007 (65) to 2008 (100), statistics that are consistent with the official data cited above. The number decreased again in 2009 (48), presumably owing to the crisis in 2008, before nearly doubling in 2010 (86). Thereafter, the number began doubling annually, reaching 2,772 strikes across the country in 2015. There was, however, an approximately 10% decrease in 2016 (to 2,498) that is perhaps attributable to the arrest of activists from several labour NGOs at the end of 2015.

(1.15) Workers' collective actions have been particularly frequent in certain regions of China, as can be seen in the statistics for 2011-2016 represented in Figure 4. Most of the labour activism was concentrated in the coastal areas, including Guangdong, Jiangsu, Zhejiang, Shandong and Shanghai. These regions are home of the most developed industries and are where the fastest growth has taken place in China's non-state economy. The regular outbreaks of labour unrest in Guangdong have been associated with companies based in Japan, Taiwan, Hong Kong, South Korea, and other foreign jurisdictions. Less-developed areas of China have also experienced strikes, though, including Fujian, Henan, Hebei, Sichuan, Chongqing and Hubei Provinces, and the labour insurgence in these areas has occurred at enterprises owned variously by the state and non-state entities.

(1.17) The occurrence of such unrest, especially the radicalisation of conflicts associated with collective labour, also made clear the failure of the Chinese labour law. Industrial conflict between labour and employers is inevitable in a market economy, but the lack of effective protections for workers' rights has complicated the situation in China. At times, government interference has transformed antagonism related to labour relations into social tensions between government officials on the one hand and workers on the other. For example, the involvement of policemen has on at least one occasion served to catalyse conflict. The issue is a crucial one because the radicalisation of industrial conflict is detrimental to both social stability and economic development. Several regulations have been passed in the area of labour law, many of which are pro-labour, but most concern individual labour relations. A durable solution to mitigate industrial conflicts, however, would involve "full respect for the right of workers to establish organisations of their own choosing, promotion of collective bargaining and creating of appropriate mechanisms where industrial disputes can be resolved through dialogue" (ILO, CFA Case 3184, para.242). From this perspective, current labour law in China remains considerably underdeveloped in terms of its capacity to regulate collective labour relations, falling far short of international standards. The existing legislation must accordingly be revised in order to provide an adequate framework for resolving collective labour disputes and balancing industrial relations.

1.4 MAIN RESEARCH QUESTIONS AND STRUCTURE OF THE THESIS

(1.18) The main research question of this thesis concerns ways to regulate collective labour relations in China. The increase in collective labour disputes, as observed, has revealed the tension between law and labour and the need for regulatory reform in order to adapt to the changing conditions. Collective labour rights and collective labour relations are thus the two core topics of this thesis. Practical suggestions for legislation must be founded on a full understanding of the flaws within the law and collective labour relations in China, and such an analysis on the flaws is undertaken in this thesis. In addressing collective labour rights and relations, this thesis includes five sub-questions that are answered in five corresponding chapters; two each address laws and relations respectively and the last focuses on the connection between them. These questions are as follows (1.4.1-1.4.5).

1.4.1 Does China observe the fundamental collective labour standards set by the ILO?

(1.19) China has not ratified either ILO (International Labour Organisation) Convention C087 (the Freedom of Association and Protection of the Right to Organise Convention) and C098 (the Right to Organise and Collective Bargaining Convention). Nevertheless, the country is obligated to respect

the two conventions in good faith based on the ILO's Declaration on Fundamental Principles and Rights at Work (1998). ILO reports conclude that China fails to observe the fundamental collective labour standards of the two core conventions. Chapter 2 takes up the question of whether these reports are accurate in their conclusions and provides an overview of the progression of and flaws in the relevant existing legislation.

1.4.2 How do the trade union systems of socialist countries compare?

(1.20) Unlike the unions in the developed capitalist countries of the West, the trade union system in China is rooted in the single party political regime. For comparative analysis, socialist countries that have political and trade union systems similar to those in China thus seem better suited. Chapter 3 accordingly includes a comparative study of legislation pertaining to the trade union systems in socialist China, Vietnam, Cuba and Laos. Relevant legislation from before and during the economic transformation of these countries is analysed with an eye to similarities and differences. The chapter also includes an evaluative discussion of whether these systems observe the ILO standards, whether the ILO standards are suited to the political and economic realities of post-socialist countries, and ways in which these systems might be revised in order to respond better to economic changes and to resolve labour disputes more effectively.

1.4.3 What are the roles of Chinese trade unions in carrying out their regulated protection functions and mediating labour unrest?

(1.21) Chapter 4 explores the roles of workplace trade unions in practice, using Foxconn as a case study. Foxconn has become the largest foundry enterprise in the world as a supplier to big brands, such as Apple, and as such is representative of worker unrest caused by harsh working conditions. Since 2010, the suicides of Foxconn workers have been frequently reported by media. In this study, the roles of trade unions in protecting workers at Foxconn are explored through a comparison between Foxconn's Chinese and Czech operations. This case study exemplifies how workplace trade unions function in the context of non-state companies in China generally and helps to make clear the implications of workers' struggles for legislation.

1.4.4 What explains the effectiveness of the worker representation mechanisms in Chinese industrial relations?

(1.22) Trade unions represent the only lawful mechanism for worker representation in collective bargaining, though other mechanisms have also appeared in practice outside the context of existing law. The Honda strike of 2010 is a prime example of the crisis in the lawful worker representation mechanism. In chapter 5, the evolution and the effectiveness of represen-

tation mechanisms is explored in the context of illustrative cases, and the reasons why some are more effective than others are considered through an analysis of the interests of various industrial actors. This chapter also continues the discussion of the possibilities of and challenges involved with promoting more effective representational mechanisms.

1.4.5 What is the impact of workers' collective actions on the law?

(1.23) The wave of strikes in 2010 demonstrated that the power of workers was re-shaping the collective bargaining system in China, as they became increasingly involved in the system. Chapter 6 offers a discussion of how, after 2010, the labour movement gradually and incrementally pushed for legislative reform. A survey of factors that influenced this effort is followed by an exploration of how state power made an institutional compromise to the workers' power in the context of collective bargaining. The successes and setbacks on the upward path towards the institutionalisation of workers' involvement in collective bargaining, along with the implications of this path for future industrial relations, are the last two topics taken up in this chapter.

1.5 RESEARCH METHODOLOGY

(1.24) This thesis draws on the fields of law, sociology and politics by incorporating 1) analysis of legal texts, 2) analysis of the literature, 3) comparative study, 4) data analysis and 5) a case study.

1.5.1 Analysis of legal texts

(1.25) The analysis of legal texts is a primary and necessary part of legal research, especially when it comes to identifying inherent flaws within legislation. This method is mainly used in chapters 2 and 3. The legal texts cited include domestic legislation from China, Vietnam, Laos, Cuba and the Czech Republic as well as ILO regulatory documents (including conventions, recommendations and reports, which can be found on the ILO website). English translations of legal texts from these other countries are usually available on official websites or websites linked to the ILO website; a few translations have been quoted from other websites. Most of the translations of Chinese legal texts (including normative documents) are from either the On-line Database of Laws and Regulations of the National People's Congress (NPC)¹¹ – the highest legislative agency in China – which provides official translations of national legislation, or, in the many cases in which legal texts at the local level are missing from the NPC database, the

11 The database of law and regulation provided by the NPC can be found at <http://www.npc.gov.cn/englishnpc/Law/Frameset-page.html>, last visited 19 July 2017.

Peking University (PKU) Law Database – which is generally regarded as the main channel for ‘unofficial’ English translations and includes all categories of legal documents of China – has been used.¹² The remaining material that cannot be found on these two databases has been translated by the author as literally as possible.

1.5.2 Analysis of the literature

(1.26) Legal literature is analysed throughout this thesis. This method is crucial for three reasons. First, when a law is vague, previous research can help to interpret it. Second, since this thesis involves no practical research, existing studies provide the empirical evidence. Third, previous literature also provides a theoretical basis for the thesis. The relevant literature here includes the writings of scholars in mainland China, Hong Kong, the West, some of whom are “immigration writers”, who were born and raised Chinese and have migrated to Western countries. Of course, scholars are subject to various biases; in general, mainland Chinese scholars tend to be less critical, presumably because their awareness of problems is limited by their limited access to relevant information, for which reason they find it difficult to compare China’s labour law system with that of another country. Research by expatriate scholars, on the other hand, which is sponsored by countries sharing different political systems from China, often fails to appreciate the true nature of the Chinese situation. Such scholarship tends to emphasise negative aspects of the Chinese economic system and to downplay its strengths. Research conducted by immigration writers and western scholars may also contain biases, depending on their own background knowledge. Taken together, the existing literature produced by these various types of scholars provides a variegated picture of collective labour law and relations in China, and one of the aims of this thesis is to make sense of this research in order avoid errors that arise from an incomplete understanding of China’s labour system. In other words, by balancing these various perspectives, this thesis seeks to provide a more objective account of law and labour in China.

1.5.3 Comparative analysis

(1.27) Comparative analysis is an important tool in efforts to improve a domestic legal system in light of analogies with other countries. The comparative study of the trade union systems and labour movements in China and other representative (post-) socialist countries occupies the second and third chapters of the thesis. As discussed, China is compared with Vietnam, Cuba and Laos. These countries and China share trade union systems that are rooted in single-ruling party political systems. Comparison

12 The link for this database is <http://www.lawinfochina.com/index.aspx>; it can be accessed directly from the Leiden University Library website.

will inform the suggestions for reform by helping to identify impractical recommendations. Chapter 4 also includes a comparison of trade unions in China and the Czech Republic since, first, both union systems evolved under similar historical conditions and, second, as has been seen, Foxconn employs workers under similar working conditions in both countries yet the courses of worker struggles at the two plants have been different.

1.5.4 Data analysis

(1.28) Data analysis is used to provide evidence regarding a general phenomenon, and this research method is mainly employed here in the introduction and in chapter 6. The official and unofficial data that are analysed here, though they have limitations, provide complementary information. As already mentioned, the official data is drawn mainly from the *China Statistical Yearbook* compiled and published by the Chinese National Bureau of Statistics in both Chinese and English.¹³ The official data provides fairly authoritative information, but there are disadvantages. For instance, these data do not indicate any details behind the figures, as is especially apparent when looking at the coverage of collective bargaining and trade unions: the official data includes the exact number of contracts that have been signed and how many workers have joined a trade union, but it provides no information concerning the collective bargaining process involved. In addition, some of the official data, e.g. the number of collective labour disputes (as explained earlier), do not exactly reflect the status quo, depending on the preference of judges and arbitrators in defining such disputes. Thus, while authoritative, the official data may lack objectivity. There is the further drawback that only those labour disputes that have been channelled into lawful institutions, i.e. collective contracts, collective negotiations and trade unions are documented, while any indication of unlawful instruments is missing from the official data, e.g. unsanctioned strikes and unapproved worker organisations.

(1.29) The unofficial data used here come from the aforementioned *China Strike* and *Strike Map* websites. *China Strike* is compiled by Manfred Elfstrom at Cornell University in the United States,¹⁴ and its information is constantly updated, while *Strike Map* is a widely-cited record of the numbers in China.¹⁵ However, it is important to recognise that these unofficial records may underreport the number of strikes owing to the fact that the unofficial data is collected through mass media reports or internal channels, which are likely to miss some labour actions. In addition, these records may not be

13 The electronic version of the *China Statistical Yearbook* can be found at <http://www.stats.gov.cn/ENGLISH/Statisticaldata/AnnualData/>, last visited 19 July 2017.

14 The website of this record is <https://chinastrikes.crowdmap.com/main>, last visited 19 July 2017.

15 The website of this record is <http://maps.clb.org.hk/strikes/en>, last visited 19 July 2017.

entirely objective. Despite these drawbacks, though, the unofficial data can serve to document at least some of actions that take place outside of lawful channels, especially when it comes to reporting the numbers of striking, so as to help compensate for the drawbacks associated with the official data.

1.5.5 Case study

(1.30) In general, data analysis is insufficient to indicate the processes at work behind statistical figures. A case study, on the other hand, is conducive to understanding the situation behind the data. As discussed in chapter 4, a case study is the research method used to gain a deeper understanding of the roles of trade union roles at a specific factory in China, the aim being to indicate the scope of trade union roles at foreign-owned enterprises generally.

(1.31) In sum, five methodologies are used in this thesis. An analysis of legal texts is carried out in chapters 2 and 3, and a comparative study is carried out in chapters 3 and 4. A case study is also explored, mainly in chapter 4, and the use of this method in combination can lessen the potential drawbacks associated with the data analysis. An analysis of the relevant literature is the main research method employed in chapters 5 and 6, though previous studies are cited throughout this thesis as part of an on-going academic dialogue. The other important methodology used here is data analysis, which is performed primarily in chapter 6. The aim of using these five methodologies is to provide a picture of Chinese labour law and labour relations on both the micro and macro levels.

1.6 LITERATURE REVIEW

(1.32) There has been a considerable amount of research on the two topics of study over the past two decades and especially since 2010. An overview of this research is presented here; more detailed reviews of specific topics can be found in the individual chapters.

1.6.1 Literature involving legal research

(1.33) Most studies of legislation pertaining to labour relations in China have been conducted by Chinese scholars, mainly because analysis of legal texts requires absolute mastery of the language. The general view supported by existing research is that, as alluded to a number of times above, current legislation is concerned primarily with the protection of individual rights, and that the regulations governing collective labour relations have been slow to develop and are riddled with problems (e.g. Ye, 2016; Chang, 2004 and 2015: 63; Zou, 2014:56; Chen, 2007; K. Chen, 2010: 103-118; Cooney, 2007: 674).

(1.34) A few Western scholars have explored trade union systems in socialist countries. Pravda and Ruble (1986) made a significant contribution to the literature with their comparison of trade unions in nine countries that they defined in terms of “Classic Dualism” and distinguished from the unions in Western capitalist countries. More recently, Anita Chan, Irene Nørlund, Tim Pringle, Simon Clarke, Simon Fry and Chang-Hee Lee are among those who have conducted comparative research on party-led unions in China and Vietnam and with Russia and Laos. Generally speaking, these studies have concentrated on industrial relations while giving scant attention to the law.

1.6.2 Literature on collective labour relations

(1.35) The bulk of earlier work concerning collective labour relations has been conducted from a sociological and political perspective and can be usefully categorised as pertaining mainly to either industrial relations, trade unions, collective bargaining, or the collective actions of workers.

(1.36) The tripartite nature of negotiations in Western countries differs from the quadripartite negotiations (*sifang tanpan*) that evolved in China. This difference is explicable, in the first place, in terms of the separation between unions and workers in China, so that four parties are usually involved in industrial relations, namely governments, trade unions, workers (or independent workers’ organisations) and employers (or employer organisations) (Taylor, *et al.*, 2003:122).

(1.37) Previous research into Chinese trade unions has focused on their identities and roles. The research of Chen (2003:1006) has been particularly influential; he argued that a Chinese trade union has a dual identity as both a state apparatus and a labour organisation and classified unions as either representing, mediating or pre-empting. National-level trade unions in general play rather active roles in lobbying for pro-labour laws and promoting workers’ participation in enterprise management. Nevertheless, the activities of the All-China Federation of Trade Unions (ACFTU) are constrained by political, institutional and organisational forces, and as such this organisation is prevented from acting independently (Clarke and Pringle 2009: 98; Liu *et al.*, 2011: 283-286). There is broad agreement among scholars that Chinese trade unions are inactive when it comes to representing workers owing to dependence on enterprise management and to “inner inertia: (Clarke and Pringle, 2009: 99; Clarke, *et al.*, 2004: 251; Chen, 2009: 680-684). There have thus been very few cases in which workplace trade union leaders have organised strikes or actively represented workers (e.g. a strike in Walmart, see Li and Liu, 2016).

(1.38) It is also widely agreed that collective bargaining in China tends to be quite formalistic. Scholars usually use the term “collective consultation” to refer to formalistic collective bargaining (Chan and Hui, 2014; Clarke, *et al.*,

2004: 251; Wu and Sun, 2014; Kuruvilla and Zhang, 2016). Formalistic collective bargaining or collective consultation often implies a lack of significant negotiation between the representatives of employers and workers (Clarke, *et al.*, 2004: 250). Collective contracts are usually conducted according to a top-down, quota-driven pattern (Wu and Sun, 2014). Most scholars agree that collective bargaining in China is transforming from “collective consultation as a formality” through “collective bargaining by riot” and towards “party state-led collective bargaining”. These three evolutionary stages co-exist in China owing to the lack of uniform attitudes among officials and uneven economic development (Chan and Hui, 2014).

(1.39) Research into labour unrest has also been conducted mainly from a political and sociological perspective. Two scholars have been particularly influential on this topic. Ching Kwan Lee (2007) argued that labour unrest is characterised by “targeting local officials, cellular activism, fragmentation of interests, and legalistic rhetoric” (2007: 238). Taking a different approach, Ngai Pun explained worker struggle as a symbol of the awakening of the Chinese working class (Pun, 2005; Chan, 2013; Chan *et al.*, 2013; Pun and Chan, 2013; Butollo and Brink, 2012). In terms of detailed accounts of the unrest, it has been reported that workers have increasingly taken the offensive with their demands during strikes (e.g. Butollo and Brink, 2012; Elfstrom and Kuruvilla, 2014); strikes are becoming more rational and organised (Chan and Hui, 2014; Pringle 2013: 197) and that administrative power often becomes involved in settling strikes (Su and He, 2010).

1.6.3 Literature review on the interaction between collective labour relations and the law

(1.40) The flaws in the legislation governing collective labour relations are considered responsible for the increase in the incidence of strikes, which in turn are increasing pressure for trade union reform (Estlund and Gurgel, 2013; Chan and Hui, 2012; Friedman, 2013 and 2014). In addition, labour unrest has also promoted policy changes at the national level. Chang (2015) argues that two types (top-down and bottom-up) of labour movement co-exist in China. Friedman (2014: 18-25) argues that the labour movement in China largely remains at the stage of an insurgent moment.

1.7 CONTRIBUTIONS

(1.41) By researching collective labour rights and collective labour relations of China, this thesis stands to make four main contributions to the literature on these crucial issues.

1.7.1 Introducing the Chinese labour law system to a wider audience

(1.42) Chinese legislation regulating labour relations in marketization appeared in 1990s. Several Western scholars have introduced Chinese labour issues to the wider world, e.g. Sean Cooney, Alan Neal, Ronald C. Brown, William Brown and Eli Friedman. Some Chinese scholars have also endeavoured to do so, among them Kai Chang, Baohua Dong and Jingyi Ye. Nevertheless, much remains to be done. Chapters 2 and 3 offer further introduction and discussion of the relevant Chinese legislation, and the country's collective labour relations are the subject of chapters 4, 5 and 6.

1.7.2 Acquainting Western audiences with the trade union systems of post-socialist countries

(1.43) This thesis also endeavours to provide an account of the trade union systems of (post-) socialist countries to those living in developed Western capitalist states. Following Pravda and Ruble, several other scholars have concentrated on the evolving trade union systems in China, Vietnam and Russia, e.g. Simon Clarke, Tim Pringle and Anita Chan, but the issues involved remain unfamiliar to most Westerners. This thesis tries to fill in this gap. An exploration of the trade union systems in all post-socialist countries is naturally beyond the scope of this thesis, but the relevant legislation of four – China, Vietnam, Laos and Cuba – that have retained socialist political systems while moving toward market economies has been selected for study. Part of the aim here is to convince more scholars to conduct research on these issues and to put forward their suggestions for improving these trade union systems.

1.7.3 Analysing labour issues in China

(1.44) This thesis also presents a complete analysis of the problems relating to Chinese labour law and labour relations. As discussed, chapters 2 and 3 investigate drawbacks of present legislation and chapters 4 and 5 address collective labour relations. Chapter 5 goes further by analysing the interests of each industrial actor and identifying reasons for variation in the effectiveness of representation. Chapter 6 examines problems relating to both the legislation and collective labour relations.

1.7.4 Putting forward realistic suggestions for legislative reform

(1.45) Rather than simply proposing that Chinese enterprises comply with international labour standards, this thesis puts forward realistic suggestions to address the drawbacks of the existing Chinese legislation and to regulate collective labour relations. Altering the current trade union system is a daunting task owing to the fact that trade union system in China is deeply rooted in the country's single-ruling party political system. The

political and institutional restrictions also indicate that suggestions must be compatible with the current political system; otherwise they are unlikely to be considered by legislators. Chapters 3, 4, 5 and 6 outline some basic principles for regulatory reform. Suggestions for future legislative reform are further discussed in the conclusion of the thesis.