

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

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Abstract

Drawing on data collected from district-level government, this paper 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 court and an assortment of government agencies. Internal documents and interviews reveal an emerging mode of state reaction. In the context of protest, the court and related government agencies engage the 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 us to reconsider the institutional boundaries of the prototypical court, the outcome of social protest, and the appropriate role of the courts in China.

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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). A body of literature has emerged that examines China’s popular protest (Michelson 2007, 2008; O’Brien 2003; O’Brien & Li 1995, 2006; Unger 2002; Yu 2007; Cai 2002, 2006; Chen 2008; Hurst & O’Brien 2002; Lee 2002, 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 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. O’Brien 1996; Li and O’Brien 1996; O’Brien and Li 2006; Yu 2003), or protests by urban pensioners and laid-off workers (Hurst and O’Brien 2002; Cai 2002, 2006, 2008). The hostile and repressive tendency of the state is also evident in theoretical constructs such as “rightful resistance” (O’Brien 1996; O’Brien and 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, 2003, 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 Our understanding would have been significantly deepened if detailed mechanisms inside the state were documented.

In this paper 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.

¹ He 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.

We examine policy rationales, organizational structure, and the government's day to day operation, as well as its actions in 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 Party mobilizes assorted local government agencies to mediate between labor and business. They often do so on behalf of labor interests under the new party doctrine of "harmonious society." Many such actions prove effective, as government meets protestors half way and brokers resolutions, often on the spot.

In the remainder of the paper, we first introduce our field site, P District, in South China. We then describe the socio-economic 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 Guangzhou 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. Labor conflicts and disputes, however, 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 live in the Delta region and P District alone had 670,000 registered in 2002. 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 raw materials are usually under

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% in 2007. In the same year, 1,600, or 20%, of enterprises in Donggua City with Taiwanese investment disappeared (*Metropolitan Daily*, 22 July 2008, Section 12).

mortgaged.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.

The government's rationale for its actions in P District is examined 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 coordinating 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, as well as 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; what their personal responsibility and liability was for any negligence or inaction; and what their specific tactics were 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 the summer of 2008. Due to the sensitive nature of the topic discussed, we did not record the interviews; instead, notes were taken during the interviews and compiled 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

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% 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).

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 popular unrest. Its origins dated back to the wake of 1989 Tiananmen Square Movement. This office enjoys strong political mandate emanating from the party center's emphasis on social stability, and veto power over other party and government agencies.

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 2003).

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 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 limitation, lack of legal representation, and the potential adverse impact on existing and future employment relationships (Halegua 2008).

The problem also relates 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 (Cai & Shi 2006). This has changed since Hu Jintao came to power in 2003. Hu has promoted 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

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

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” (*Chongqing Evening News*, 18 December 2008). The first concerns preemption. 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 opens the possibility that protests may be the result of local officials’ negligence. Indeed many local leaders are dismissed on such a ground in the event of a social protest (*Guizhou Daily*, 1 July 2008). The second principle demands that local government agencies appear on the site whenever a protest breaks out. In his words, they must appear at the “first site” and at the “first moment” (*Chongqing Evening News*, 18 December 2008). This principle opens the possibility that local leaders under whose watch a protest may escalate into a high-profile event may be blamed. Failing 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 weapon 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 the rule-by-law and the 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. They often do 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 overly-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 half way 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 which 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 three

hundred workers of the Baoli Gift and Decoration Company gathered on the public road, blocked the 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 spot immediately (P Court 2008). 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 for the case: the case filing division immediately approved the acceptance of the cases.” (P Court 2008). In another dispute involving unpaid overtime for 77 workers in 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). 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) Instead of waiting for the workers to finish the arbitration process and file a lawsuit, as required by law, the courts 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 courts not only informed them of the availability of legal remedies, but also helped them to go through the procedure. This practice conforms to the requirements of the Guangzhou 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” (Guangzhou Intermediate Court 2005a). This practice, however, 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 the coastal regions 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 1990’s, China reformed its civil procedure: an 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 District P show a “street courtroom” where government practices are inquisitorial. Courts 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.” 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 *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 District court 2008). 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 of 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 stated 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 (Guangzhou Intermediate Court, 2005b). This includes an 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 will also be given priority in compulsory enforcement (Guangzhou Intermediate Court, 2005a).

Outcomes Favorable to Protesters

Most importantly, the courts appear to try to broker a favorable deal for the 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.” 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 enterprises 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 which had been frozen in the two cash accounts despite the fact that the enforcement procedure would take at

⁶ According to the Civil Litigation Law 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 also do this if it deems it necessary. Apparently in cases like this the court takes the initiative to freeze the assets.

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 totally neglected the neutral position that a court is supposed to assume. The report stated that one of the experiences it 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, 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 or wired away 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 under mortgaged. 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” that would usually be dragged into this whirlpool is the owner of the site which 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, which was the Hengjiang Village, should pay 30% of the 335,000 yuan owed in unpaid wages (P Court 2006). 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 owned 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 be based?

We found no explicit laws in this regard. But an internal report by the P District 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) 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 cannot solve the problem, the next in line must 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 Annal, 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 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 words 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, that 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 learnt that their money had been allocated to serve the purpose of stability maintenance, they rushed onto the road to protest (P District Court, 2007). As one of our judge informants said: "When the fire in one place is put down, it comes out from another place."⁸ 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

⁷ While it is not clear from the number how much was spent on Weiwen, 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 the expenditure on the Police, Procurates, and Courts was 0.61 billion yuan. P District Annal, 2006: 201.

⁸ Interviewed on 10, August 2008.

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). This is, however, not a battle between the parties to litigation nor 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 which 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. This is an institution which has been set up throughout the country and at all levels of the state. Under the subtitle of “Stability Maintenance Work,” the Guangdong Annal states 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.” In the P District, all the township governments (street-level neighborhood committees) set up separate offices of stability maintenance and comprehensive social control (P District Annal 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 also form an information channel and network. To better coordinate with individual state apparatus, one or more stability maintenance coordinators are designated in each of these institutions. Whenever information is received which indicates that a mass incident is imminent or has already broken out, the message can be effectively communicated 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 Procuratory, and the Justice Department, and will appropriately solve the difficulties and problems in this course.”(Guangzhou Intermediate Court, 2007). 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). As an internal document of the Guangzhou Intermediate Court states, “[t]he two levels of the courts have taken the matter of stability maintenance extremely seriously. The number one guy in every court assumed the overall responsibility and the managing vice director assumed the leadership responsibility. Other cabinet members assisted the No. 1 and No. 2. All the heads of the other internal departments assumed the responsibility for their areas, forming a hierarchical system of responsibility (2007). 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;⁹ 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) Inside the judiciary, the principle is that “the person in charge assumes responsibility.” “Periodical check-ups and specific examinations were launched, realizing relevant rewards and punishments. For those institutions and individuals which were not competent in this regard, publicized criticisms were circulated (*tong bao pi ping*); for those who were seriously negligent, leading to mass incidents or the escalation of mass incidents with serious consequences, relevant leaders and staff were punished.” (Guangzhou Intermediate Court, 2007). 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 Annal 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 the traffic (Lee 2007:189) and nobody was arrested. 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.¹⁰ The P District Court even distributed “how to” leaflets highlighting the legal channels and remedies for protecting workers’ rights, so that workers can take comfort in initiating legal lawsuits. The state intends to guide the crowd into a legal channel, and to ask the 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 which would explore new thoughts, measures, and mechanisms toward improving the level of stability maintenance (Political-Legal Committee of P District 2008). That is why we 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,

⁹ According to *Mingpao News*(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.

¹⁰ Interview with a cadre, Hualong Justice Department, P District, Guangzhou, Guangdong Province, 28 Mar. 2008.

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. In the Baoli case, when the director of No.1 Division of P Court arrived on the spot, all the leaders of the town were already there. Another example of this 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 this 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.”(Hualong Township Justice Office 2008a)

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 vs. 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 occur, 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 *Baoshengchang* case, five worker representatives had originally negotiated peacefully with the P District Labor Welfare Bureau, but the officials had only promised to pay 30% of the back pay (using funds from the Hengjiang Village) with the rest of the money being deferred 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% of the back pay, and two days later, this had gone up to 100%. 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, nor 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).

This process described in our research also contrasts 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 could also be easily missed, depending on how the courts play with the dates. The evidence provided by the workers, such as medical bills or working records, could 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 could 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 the imperative dictated by the stability doctrine. Legal requirements, according to an internal document, become "legal obstacles" to be got rid of as quickly as possible (P District Court 2005). 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, as the existing literature would suggest (citations to this point?). Rather, large-scale protest may draw more attention from the media and higher-level officials, and be perceived 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 took assertive action by freezing the company assets and bank accounts. In part, this response occurred because the disputes involved 77 workers. When thousands of workers collectively demanded back pay when Hejun Toys, a company listed in Hong Kong stock market, collapsed, the Zhangmutou township government in Dongguan municipality fully *dainfu* the back pay, despite the fact that the amount was as much as 24 million yuan (Wen Chong et al. 2009)

In another case reported by newspapers, when several factories of Hejun Toys collapsed with the bosses disappearing in 2008, and thousands of workers demanded back pay in the streets of Dongguan and Qingyun municipalities, the central government was alarmed (Mingpao Daily 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.” The governor and the party boss of Guangdong province required a full implementation of these instructions so to “prevent similar incidents from occurring again.” *Yangcheng Evening News*, the official newspaper owned by the Guangzhou municipal government, openly criticized the grassroots government for not doing their homework (See also *Dongfang Kuaibao*, 22 October 2008, A30). When the number of protesters was not significant, according to news reports, the state often goes beyond “ignoring” the small protests, and 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.”¹¹

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 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, the *Gaolaida* case, the court swiftly froze the company’s assets. After all, the bill for this will be paid by the employer. But if the company has 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 Stationary Company, disappeared, the company owned almost 2.7 million yuan back pay to 527 workers. As the company only had 250,000 yuan 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 collective action of the workers (*Guangzhou Daily*, 12 December 2008, 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. 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).

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

¹¹ Interview with an official, P Weiwenban, P District, Guangzhou, Guangdong Province, 28 June 2008.

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 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 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 the 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 worker known to be the possible leaders. This had an enormous deterrent effect: more than 1,000 workers gradually dispersed (Hualong Justice Department 2008b). In another incident in which local residents protested a new highway which was to be built across from their residential areas, He Li and five other 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 them as the organizers (*Kunming Daily* 2008: 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 taking place in Xiamen. In their protest against a pollution-ridden project, local residents disseminated the time and venue to “have a walk” through cell phone text messages. The project was suspended as a result (*China Digital Times* 2007)

Taken together, the above hypotheses point to some level of effectiveness of the protests in China. This shall 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 in 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 (1981:17-18). 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 which are deployed to respond to popular resistance represent a “court” with spanning boundaries.¹² First, we see the court as *organizationally overlapping*: the state as the “third party” not only consists of the legal apparatus such as the court and police department, but also various administrative agencies. A fundamental challenge is posed by the 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, we consider the court as *procedurally inclusive*: the court not only responds 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 forthcoming), 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 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.¹³ 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 which have taken the form of street action, or cases that are coupled with such a protest. This finding is consistent with 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

¹² The term “spanning boundaries” is inspired by O’Brien (2003) who considers Chinese protest as “boundary-spanning.”

¹³ This discussion is inspired by Charles Tilly’s scheme of regime types. He uses state capacity and democracy. We add the rule of law as the other dimension (Tilly 2007).

contention. Gamson (1975) coined the term “success of the unruly,” to summarize his findings that groups which 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 would increase the likelihood of government response.

This paper has examined the internal logic and operational patterns of the state in the transition from the 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 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 our understanding of protests and courts in China.

The findings on accommodating attitude and “street as courtroom” practices shall 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 1996; O’Brien & Li 2006), and the “repression-concession dilemma” (Cai 2008). This is understandable, for the mechanism of state accommodation is less salient on their 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 state-owned enterprises or state welfare agencies (also see Cai 2006, 2002). In peasant resistances or laid-off worker protests, the state is directly challenged and it 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 paper, the local government is not only the authority being challenged, but also the adjudicator. Its interest not only lies in ending protests, but also in doing justice to the protesters who have been mistreated by the delinquent companies. The protesters, occasional violators 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 this circumstance, 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 sets 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 finding 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 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 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 is able to 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 on 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 practice 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 management and the local government. But all these arrangements have helped contain the conflict which 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 the specific context (Rodrick 2003; He 2004; Ginsburg & Moustafa 2008; Peerenboom 2009 forthcoming).

Aside 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 the 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, shall make further efforts in strengthening the established legal channels. This will help facilitate the process of delivering justice to the workers. The state shall also institutionalize the rights of protest. This will not only help contain the conflict within the established channels, but also avoid further challenges to its legitimacy.

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