

# **Above the Roof, Beneath the Law: Perceived Justice behind Disruptive Tactics of Migrant Wage Claimants in China**

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## **Abstract**

The way in which citizens in developing countries conceptualize legality is a critical but understudied question for legal consciousness and legal mobilization studies. Drawing on participatory observations and extensive interviews from western China, this article explores the subjective interpretations of migrant wage claimants on law and justice behind their disruptive actions. Their perception of justice differs starkly from what the law stipulates as target, evidence and proper procedures. Who shall be held responsible? What constitutes evidence? When shall they be paid? How much? Their perceptions also differ from the attitude “against the law” found among members from disadvantaged social groups in the United States. The Chinese case of legal perception is shaped by the moral precepts ingrained in the culture, and more importantly, by the lopsided relationship between migrant workers and the political and business elite. It thus points to the daunting barriers in channeling the ever-growing number of social conflicts into court.

## **Above the Roof, Beneath the Law: Perceived Justice behind Disruptive Tactics of Migrant Wage Claimants in China**

Mom and Dad, I cannot come home for the Spring Festival;  
For I cannot face you without bringing back the year's pay.

... ..

But I say to myself that I must remain calm;  
For I know there is justice under Heaven.  
I am the creditor, undoubtedly!  
It is them who owe me!

"It's Them Who Owe Me." A ballad written by Shi (2011) and very popular among internal migrant workers in China.

China's rapid economic development has been the result of labor of millions of internal migrant workers, farmers who leave their land and find a job in a city. In 2009 the estimated number of such migrant workers was 149 million (*International Online* 2010), more than the population of most countries. Relegated to the very bottom of the society, they face grueling work, dangerous, unsanitary, and uncomfortable working conditions, and discrimination. Lacking proper education or connections in the city, they are easy to exploit with impunity. Many of them cannot even collect their meager wages. Their frustration and sadness abound, as attested in Shi's ballad. This situation has become so serious that Premier Wen Jiabao personally collected wages for a migrant worker, obviously to call attention to the problem (*CCTV International* 2003).

While a tiny, albeit increasing, proportion of migrant workers takes the issue to the formal legal channel, most others resort to other strategies. Some register complaints with petition officials, others stage street protests; when these fail, more desperate acts ensue, with aggrieved workers threatening to commit public suicide—an act that takes the case not only to the street, but literally to the rooftop, threatening to throw themselves off building. The purpose

is to disrupt the social order, calling for attention and, ideally, a favorable response from the authorities. In this article, we will characterize these practices collectively as *disruptive tactics*, a category of actions in contrast to actions through the official channels of government and law. The immediate consequences of these actions vary: direct mass pressure is generated by street protest, for example, and media attention may be enlisted by the threat of suicide.

The question of why migrant workers choose disruptive actions over legal ones deserves scholarly attention. Their actions are related to their views of law and justice, as well as their understanding of the effectiveness of disruptive tactics. In her book on labor protests, *Against the Law*, Lee (2007: 239) states, “[M]igrant workers...share ...the language of rule by law and legal rights to articulate their critique of exploitation.” O’Brien and Li (2006) also observe that law and legal battles have also become an integral part of the “rightful resistance” of rural citizens. For this group of authors, the recent waves of laws in China alerted awareness of the rights of China's weak and downtrodden. What is left unexplained, though, is why this new rights consciousness has paradoxically driven many migrant workers *away* from the legal system, and to engage in disruptive actions.

The literature on legal consciousness in China is ill-equipped to answer this question. Many studies of legal consciousness in China focus on those who have chosen formal legal channels (Gallagher 2006; Landry 2008; Ho 2009; Pei 2010). The findings from a few exceptions that touch upon public attitude toward official justice, however, only make the question more puzzling. Gallagher and Wang (2011: 230), for instance, contend that “[Y]ounger, non-state workers tended to take their cases directly to the legal system after direct negotiations with management failed...They barely even contemplated going to the government’s petitioning offices.” Michelson and Read’s survey (2011) suggests that those who have no experience with

the formal legal systems tend to view the system positively, even though their view of the legality would soon be replaced by “informed disenchantment” (Gallagher 2006) once they start engaging the system. Why, then, would most migrant workers, most of whom are young and employed outside the state-owned sectors and have little experience with the formal legal system, decide to never bother with the law, or to take disruptive actions after their initial contacts with officials?

This present study explores the minds of the migrant workers and examines their subjective interpretations. Instead of detailing the objective conditions in explaining the resurgence of labor protest in contemporary China (Lee 2007; Gallagher 2003; Halegua 2008; Woo et al. 2007; Su and He 2010; Shi and Cai 2006), it focuses on the subjective interpretations of claimants: How do they perceive law and legality? How does their perception affect their choice of action? How are their views sustained and reinforced? These are critical questions for understanding the trajectory of legal consciousness of this large group of population and its relationship to socio-economic structures. They will also shed important light on whether legal rights will take hold among this group and what kind of legal mobilization will result.

## **Theoretical Considerations**

“One’s choice not to pursue legal remedies may be genuinely subversive when it exposes law’s cruelty” (Bumiller 1988:x). In this paper we follow a research tradition known as “legal consciousness of ordinary people” (Engel 2005:508) or “perception of justice of people in the street” (Ewick and Silbey 1998; Sarat 1990; Merry 1990; Yngvesson 1993; Bumiller 1988; Engel 1993, 2005). That is a scholarship that underscores law’s pervasiveness within as well as beyond official institutions, and directs inquiry toward “law’s power in the everyday rather than

exceptional, in the routine rather than the rare, in the hardly noticed experiences than the high profile disputes” (McCann and March 1996: 209-10). The empirical research in the last two decades has ushered in a paradigm in law and society research, toward a constitutive perspective that views law as one of many competing forces that affect and shape social life (Nielson 2000; also see Suchman and Edelman 1996). In this tradition, law is defined “less as discrete rules and official decisions than as various modes of knowledge—as specific cultural conventions, logics, rituals, symbols, skills, practices, and processes that citizens routinely deploy in practical activity” (McCann and March 1996:210).

The empirical project of this research paradigm has generated insights from a wide array of groups and settings (e.g., Ewick and Silbey 1998; Engel 2005; Engel and Engel 2010; Bumiller 1988; Nielson 2000). Empirical researchers have started to go beyond illustrating the general points and developing ideal types to documenting and accounting for variations. Exemplar analysis includes Nielson’s (2000) work on perception of law on offensive speech in public places across groups of US citizens and Engel’s work on Thailand (Engel 2005; Engel and Engel 2010). Nielson (2000) not only conducted in-depth observations, but also collected systematic data comparing gender, racial and ethnic groups. She revealed four paradigms of reasoning behind the objection to law’s intervention to offensive public speech among gender and ethnic groups. Engel (2005) brings cases from outside the United States, showing the fruitfulness in cross-cultural comparison. Buajan, a 39-year-old Thai woman, could have reacted differently to the car accident that left her with a broken leg. Had she remained in her village, according to Engel (2005), her injurer would most likely have been a fellow villager and hence compelled by local customs to pay damages; otherwise Buajan would choose to pursue a traditional remedy in the provincial court. But Buajan experienced the accident when she had

been uprooted from her village and making a living in an entirely different urban setting. “With these changes came others that affected the conceptualization of her injury and the range of options she could imagine in response” (p.509). Buajan and other informants of Engel’s found themselves in a situation in which legal recourse became elusive, if not entirely out of reach.

It is within this line of inquiry of *situated* legal consciousness that we inquire into the Chinese case. Our case is about a unique social group: the lowest of the low. Our case is also about the legal consciousness in a country with a political system and a culture vastly different from those in the existing literature on legal consciousness. Our task is to pinpoint the specifics of the migrant workers’ legal consciousness, and the forms of resistance that are germane to this type of legal consciousness.

We follow Engel (1993), McCann and March (1996), and Brisbin (2010) to conceptualize legal consciousness into two dimensions. One dimension, or consciousness “of” the law, focuses on law as rules, norms, logics, discourses and procedures. The other, or consciousness “about” the law, emphasizes law as a dimension or form of social life (McCann and March 1996:215). As commentators have rightly pointed out, studies of law in everyday life have not make clear this distinction but “shift back and forth between these two dimensions, thus leaving the reader unsure of what is meant by legal consciousness at particular moments” (McCann and March 1996:215). As will be discussed below, it is not only useful to differentiate these two dimensions in our case but it is also critical in understanding the tension between the two dimensions in the wage claimants’ perception of justice.

A tension will be revealed when we make this distinction. On the one hand, Chinese wage claimants hold the straightforward view of work-and-pay justice deeply ingrained Chinese

culture. On the other hand, because of this extreme position as the society's most downtrodden class, the complexity of the law in action is beyond their comprehension. This contradiction would send many of them away from the official system. They stage protest in the street, or even on the rooftops, to obtain redress. We contend that the origin of disruptive tactics lies in the tension between the two dimensions of legal perception. Following Engel (2005), we depict the specific legal perception in the intersection between culture and the situation the Chinese wage claimants find themselves between the traditional view of justice and the extreme position of power disadvantage.

Hence we extend the scholarship of legal consciousness of everyday life to the Chinese setting, where law and its relationship with the citizenry differ markedly from their counterparts in the Western democracies. Ewick and Silbey explored the relationship between social-economic status groups and specific forms of legal consciousness. Orientations toward law are hypothesized to correlate with social status: members of disenfranchised or subordinate groups will be more likely to be "against the law" and to employ methods of passive "resistance" (Ewick and Silbey 1998:235). In contrast to "against the law," we suggest that the disruptive tactics of Chinese wage claimants are "beneath the law." The claimants may not be against the law, and they could even support the law, but the law is simply too "high." The law and legality seem beyond their reach: their views on evidence, timing and amount of payment, and parties responsible for unpaid wages are, in large measure, incongruent with the state version.

## **Studying Migrant Workers in Sichuan Province**

The findings reported here are based on data collected from County Z of Sichuan Province in Western China. Located in the country's heartland, the region is a few steps behind the booming coastal cities in economic development. Of its population of 780,000, more than 75% are rural, which suggests that agriculture is its pillar industry. According to official statistics, the county's GDP per capita only reached 19,000 yuan or USD 3,000 in 2010, about half of the more developed coastal areas. This resulted from the central government's Grand Development of the West campaign that has brought high-profile investment projects to the region. As the time of our fieldwork, the county seat was at its height of a construction boom. Rarely could one see a quiet old street; cranes were erected everywhere. The construction workers were former farmers streaming in daily from villages of this and neighboring counties.

The darker side of the economic transformation of this formally rural county is routine stories of unpaid wages in the construction sector. While this sector has provided migrant workers job opportunities, it has been poorly regulated. For reasons that will be elaborated below, the situation of wage earners here was particularly precarious, more so than that of their counterparts in manufacturing sectors of the coastal region. Around one thousand construction sites in the county were notorious for their unpaid wages. Almost every day migrant workers came to the district government with wage disputes.

Our data collection consisted of two stages. One of the investigators was a law professor at a university that was close to this suburban county. From 2007-2008 he had conducted fieldwork in the county, forming connections with migrant workers as well as with county officials who were in charge of labor relations. When the other investigators visited the county in



2008 and again in 2009, we interviewed the officials on how they handled the issue and accessed relevant government documents, which revealed concerns and strategies of the government. We also contacted a few groups of wage claimants right after they filed their initial complaints with the county's Labor Supervision Office, located inside the county government building. We introduced ourselves, obtained their contact information, and secured their agreement for us to follow up the trajectories of effort of receiving the wages that were owed to them.

We then followed up these cases by periodically calling the leaders of each group. When possible, we scheduled new meetings with them for in-depth conversations. In some cases we engaged in participatory observation by accompanying a few groups of migrant workers as they collected their unpaid wages through a variety of avenues. We witnessed three collective wage collection events, observing their interaction, and recording their formal and informal conversations with government officials and employers. We enquired into their view of legality and law, and the rationale they had for their actions.

### **Exclusion from Formal Legal Channels**

Wage claims by migrant workers have become commonplace since China intensified its regulation of the labor sector. Both policy makers and academics have hoped that the legal reforms would provide some protection for the workers. Indeed, the state has significantly reduced the cost of accessing formal dispute resolution mechanisms (State Council 2007) and in 2008 it introduced a Labor Contract Law that is weighted toward the labor rights. These efforts have not been futile: the formal legal channel has handled the rapidly increasing number of labor disputes (Gallagher 2005). However, data on arbitration and court cases tell only about the numerator but nothing about the denominator. A more accurate evaluation of the workers' rights

in the resolution of labor disputes requires consideration of the situation of aggrieved workers from which these full-blown disputes are selected. As Felstiner et al. (1980–1981:636) state, “A theory of disputing that looked only at institutions mobilized by claimants and the strategies pursued within them would be seriously deficient” and an important task of law and society research is to understand how disputes are handled outside the formal legal system. In other words, we need to consider the situation of those who never had their grievances filed in the formal legal channels.

A survey by Xinhua News Agency found that nearly three-quarters of migrant workers have trouble collecting their wages (Pan 2003). A majority of those polled said that the best way to get their money is to beg, bargain with or harass their employers; barely a quarter considered seeking help from the government and less than two% preferred to going to court (Pan 2003). Another report has found that in 2005, Dongguan municipality, a stronghold of labor-intensive enterprises, in Guangdong province has recorded 43,406 labor disputes, but only 7055 labor arbitration cases (Xu 2008: 265). According to a survey of migrant workers in two provinces, only 14.7% believe labor arbitration is the most effective means of resolving labor disputes (Jiang 2006: 117). As shown in Table 1, our fieldwork investigation indicates that the labor arbitration—the formal legal channel—only handles a tiny fraction of disputes, compared to those going through the informal administrative channels. Furthermore, there's no way to ascertain the number of disputes that have never entered into the official statistics.

[Table 1 about here]

Behind the low rates is a seriously flawed formal system that excludes the majority of wronged migrant workers. The compulsory arbitration stage, for instance, has merely become a

procedural barrier for many to access court (Gallagher and Wang 2011). As detailed by Halegua (2008), the high cost, long duration, migrants' lack of legal knowledge and representation (Michelson 2006), and difficulty in having arbitration and court decisions enforced are chronic problems in the formal channels.

The institutional environment, however, only tells part of the story. A more fundamental reason lies in the nature of disputes and especially the lopsided relationship between migrant workers and their employers. By various measures, migrant workers lie at the very bottom of Chinese society (Solinger 1999; 2006). Without urban household residencies, their employment opportunities are limited to short-term low-wage jobs; social security welfare and hygienic protection measures are rarely provided (Pun et al. 2010: 112-163). The tremendous supply of migrant workers for those positions deprives them of bargaining power vis-à-vis their employers. If a migrant worker requests a written contract when looking for work, an employer would only view him as a troublemaker and choose a less demanding worker. In this situation the only recourse that the workers have is the legal requirement that employers shall provide written contracts. But as one migrant chuckled at the idea: "how could an uneducated person like me start discussing specific legal stipulations with my boss?" (Halegua 2008: 277)

Moreover, when they come to city, many of them find jobs through their fellow villagers and a middleman or subcontractor. Migrant workers often do not even think of requesting a written contract. Due to this close relationship and difficulty of locating a job, they usually regard a formal employment contract as unnecessary, if not out of mind. As stated by a migrant worker, "I was introduced by a friend from my hometown (*laoxiang*), so if I don't have a contract, it is no big deal (*mei shi*)" (Tong and Xiao 2005). They also fear that they will be fired or blacklisted by other employers if they make such a request (Tong and Xiao 2005).

In County Z, Sichuan province, many workers do not even know what a written contract is. This situation is consistent with reports from other regions. In the Pearl River Delta, where the labor market is more regulated, many workers are not even given a chance to sign a written employment contract (Lee 2007). A survey of 1000 migrant workers in the city of Harbin found that only 19.58% had written contracts, over half had oral agreements and 21.11% had never discussed anything of the kind with their employer (Tong and Xiao 2005). According to other estimates, less than 10% of migrant workers have written employment contracts (Kuhn 2004).

Whatever the reason for not having a written contract, when disputes arise, migrant workers usually lack the most rudimentary evidence to prove the existence of the employment relationship, let alone evidence of wage arrears, working days, and hours. Some fortunate workers may be able to obtain a written letter documenting their work record from their fellow workers. Indeed, few workers are willing to confront their employers in the formal settings, fearing reprisals or gaining a reputation for making trouble.

The situation becomes even worse in the construction industry where most unpaid wages occur and where most of our interviewees are employed. In these usually short-term projects, where large numbers of workers are needed and turnover is high, the middlemen, dispatch companies, or team heads (包工头) serve as labor brokers, connecting user companies with laborers (Halegua 2008: 277-278). The user companies offer to pay these brokers to find workers. But these brokers may not even be registered as legal entities. In some projects, there are six to seven layers of subcontracting (Pun et al. 2010: 130-131). It is unclear which entities are the real employers. Once the wages are not paid, either because the user companies or subcontractors collapse, disappear, go bankrupt, or because the brokers keep some or all of the money, migrant workers have no idea which parties shall be held legally responsible.

## **Disruptive Tactics**

While only small proportions of cases go to the formal legal channel, many were abandoned by migrant workers, and many others are resolved through informal administrative channels. Some migrant workers, nonetheless, resort to disruptive tactics to get paid. Only when the social order is shaken will impersonal bureaucratic systems respond (Ewick and Silbey 1998). A migrant who received payment after threatening suicide succinctly stated, “If I don’t do this, how will the government ever notice my problem?” (Authors’ interview 2008).

Workers’ first targets are the employers and related parties. Migrant workers occupy the construction site or the employers’ office. A report of the Social Welfare Bureau to the General Office of the Labor Supervision Bureau of County Z (2008), listed three such sit-ins taking place within a month, all involving the construction business. On January 28, 2008, when the contractor for construction disappeared with the money, 181 workers protested at the construction site. This incident immediately drew the local government’s attention. With the involvement of the Social Welfare Bureau, the developer agreed to pay the wages within hours.

Such actions create work stoppages, thus forcing the employer, and if possible, the government to respond. Whether these strategies work or not, however, depends on the employers, who may claim that they lack the cash. Nonetheless, when migrant workers are dissatisfied, their next target may be the owner of the project on which the migrant workers have worked. In December 2008, 80 migrant workers occupied the apartment selling office of the developer, after numerous failed attempts to obtain payment from the construction company, which claimed the developer had not delivered the construction fees as promised. The occupation crippled the sales activities because the migrants clashed with the security guards, and told every

prospective buyer of the dispute. Eventually the police were summoned, and only after the developer installed a surveillance camera did migrant workers begin to leave.

In another case, nine construction workers climbed onto a university gate that was still in the process of being built, because the construction company that the university contracted to failed to pay the wages in one project (*People's Net* 2011). Legally speaking, neither the university nor the developer had any relationship with the workers, and thus were not liable for the unpaid wages. Still, it was embarrassing to have a group of migrants claiming back pay at the gate of a university or the sales department of a developer.

When chasing the employer or the related parties is fruitless, local governments become the target. The most dramatic scene occurs, as documented by Su and He (2010), when enterprises collapse with a large number of unpaid workers. The workers take to the streets, blocking traffic, and insisting that the local government solve the problem. In other cases, migrant workers sit in outside the office building of the government, holding officials and sometimes employers hostage. According to the Emergency Responding Office of County Z (2009):

At 9 am on February 4, 2008, around 40 migrant workers, led by their team leaders, went to the Construction Bureau of County Z, to request unpaid wages of 580,000 yuan. The Construction Bureau guided the workers back to the construction site and summoned all relevant parties on the spot to help resolve the dispute. At 3 pm, some migrant workers became emotional, taking the boss of the developer together with them, gathered outside the administration center of the municipal government and blocked all the doors.

These actions are direct, focused, and effective. A government document listing eight incidents between January and February of 2009 indicates that most requests were satisfied within hours, with some exceptions taking 2-3 days. The Emergency Responding Office of County Z (2009) states:

When the protesting workers returned to the Construction Bureau, the officials there immediately notified all the parties involved to come. When migrant workers surrounded the municipal government, the Office Responding to Emergencies, together with the Staffing and Welfare Bureau, Construction Bureau, and the Police actively participated in the dispute resolution.

In the above event, an agreement was reached at 10 pm, in which the construction company delivered 320 thousand yuan (including 150 thousand yuan as deposit) to the labor user company, so the latter can pay the workers immediately. The deal also made it clear that the balance would be settled by the end of the month by the two parties.

A key reason for the effectiveness of these tactics is that collective actions are officially termed “Malignant Incidents” (involving death) or “Mass Incidents” (involving ten people or more), the number of which has become the performance measures of local officials at a time when social stability has become the government’s first priority (Su and He 2010; Minzner 2009). Another reason is that when the government intervenes, employers or developers are generally more willing to provide funds, to give a face to the government. But to interfere with the functioning of the government, large numbers of migrants are required. This is both difficult and risky: the authorities may round up the organizers and label the event as “malicious wage claiming” (Xinhua Net 2005).

When none of these tactics are feasible, some aggrieved migrant workers, without a specific target, take action against the social order. This may be because only one or just a few migrant workers are involved, making a sizable protest out of the questions, or because they face threat or reprisals by employers and thus dare not to confront them.<sup>1</sup> In other words, this tactic is often employed by the most desperate migrant workers. All that they have to lose, sadly, are their lives. To compensate for their inadequate resources, they must raise the stakes by acting dramatically. As well-documented by news reports (e.g., Pan 2003), the most commonly seen form of this type has been the suicide threat: migrant workers perch on roof tops or towering construction cranes, from which they threaten to leap. This does not take much mobilization or organization but this is the last resort.

The effectiveness of this tactic depends on the reactions of the government and the media. These events usually attract the attention of the public. To prevent the incident from escalating and to avoid blame, local governments may respond quickly. An annual report of the Staffing and Labor Welfare Bureau of County Z states (2008),

In the afternoon of December 6, two migrant workers climbed to the construction tower, threatening to commit suicide, to request the user company to pay the delayed wages. Being informed of the incident, the major leaders, with other staff of the labor supervision division, immediately arrived at the spot. At the moment when we were persuading, explaining, comforting the workers with louder speakers, we also located the person in charge of the construction site, demanding an immediate liquidation and the

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<sup>1</sup> There are too many such incidents to list here. Indeed, a migrant worker whom we accompanied to claim wages was hospitalized after being beaten by thugs hired by the employer. For examples of this type of news reports, see *China Youth Daily* 2003; 2005; 2007; *Beijing Evening News* 2006.



materialization of the unpaid wages. Our efforts have successfully resolved the case, preventing a forthcoming bloody incident.

Only a few migrant workers were so lucky because the government does not always act promptly and in their support. Indeed, more often than not the authorities take a tough stance, in part to deter similar events. Some “malicious” migrants were rounded up by the police immediately after getting off the crane. Occasionally a threat of suicide is carried out; some migrants have jumped to their deaths (c.f., Xu 2008).

When used repeatedly, these sensational tactics become less effective. The purpose of a suicide threat is to attract media and government attention. As social movement research points out, tactical innovation is a key to the success of resistance (McAdam 1983). Polletta (2006: 139-140) also argues that familiar stories undercut their effectiveness in bringing about social change. In recent years, migrants have been innovating.<sup>2</sup> However, can migrant workers keep innovating indefinitely? As these tactics have been more common, the society, media, and local governments will get used to them and become less responsive. On the policy level, the state may regulate the sector in a more effective way, but the long-term policy change would not help migrant workers who need immediate payment.

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<sup>2</sup> A migrant worker attempted self-immolation in the Tiananmen Square; one nearly naked woman was protesting at the gate of the factory where she had worked; three workers dressed themselves as Spiderman at the construction site with a banner “Return my wages earned with blood and sweat!” See *Yangcheng Evening News* 2010. A successful story, known as “The Wives Claiming Unpaid Wages,” involves a group of migrant workers’ wives. They traveled thousands of miles from their hometown to Kunming, the Capital city of Yunnan province, where the construction site was located. These women then cried outside the construction site with a banner stating their request. The wailing women, in contrast to men in most of unpaid wages cases, immediately drew the attention of the media and the local governments. The unpaid wages of their husbands were soon paid by the construction company under the tremendous pressure from both the governments and the media. See Jiang 2007.

## **Perceived Justice**

### ***Blaming the government***

Since many migrant workers have only, at best, vague ideas on the employment relationship, who shall be held responsible is often unclear. That is why the broker or the user company is blamed. When their demands are rejected, migrant workers shift the blame to the suppliers, the buyers of their work, and eventually the local government. Some of these parties may not have a formal legal relationship with the migrant workers, and may not know why they have been dragged into this whirlpool. The migrant workers believe that ultimately their situation is the government's fault. The purpose of disrupting the social order is to draw government attention and intervention, and that is why their actions escalate when ignored.

Although migrant workers know that neither the government nor the officials are responsible for paying them, blaming the government is justifiable for several reasons. As Scott states (1990), there are "hidden transcripts" in resistance. Most of migrant workers interviewed by us believe that the developers are closely related to, if not in collusion with, the local government. As noted by Lee (2007), such a relationship has been an open secret at a time when attracting more investment and increasing GDP has been a key criterion for evaluating the performance of local officials. A migrant worker occupying the Construction Bureau offices overnight said to us, "The government officials take kickbacks! You see the TV programs [indicating the widespread corruption]...I guarantee that they all take kickbacks." Seeing many cases of such ties revealed by mass media, migrants tend to hold the officials accountable for their unpaid wages: the close relationship between the officials and employers is the culprit that emboldens the latter to evade payments. As long as officials take kickbacks, the workers believe,

they shall also suffer the consequences. Another migrant worker said: “Dare they take the kickbacks; dare they not solve the problem?”

Interviewed migrants also believe that the government, with its seemingly omnipotent authority and long reach, is in a better position to forge a solution. In a collective action four days before the 2009 Spring Festival (the 2009 Incident), 50 migrant workers blocked the door of the Wages Clearance Office. The migrant workers took several officials and two representatives of the developer hostage: they requested an immediate delivery of 1.7 million yuan in back pay. When asked why the government should be involved, one migrant worker said, “Only the government can solve this problem through notifying them [the user company]. If the government were not involved, where can we find them? If we cannot even locate them, how can the problem be solved?” Another migrant worker responded: “For officials, solving the problem is as easy as lip-synching.” A third said, “If we take physical action against the developer, the police will round us up. And the developer does not even answer our phone calls, so the government shall notify them.” A fourth added: “We workers are not even aware of the whereabouts of the user company. We have to chase these guys. No other choice.”

When the officials pressure the responsible parties, the employers and other parties are responsive. After one developer, who under the law was not responsible for the unpaid wages, was obliged to pay 0.8 million yuan in a collective incident, the vice chairman of the developer said to us: “We are invited by the local government to do business here. The government supported our projects enormously during last year. Now that they run into trouble, we cannot just be a spectator. The 0.8 million has no legal basis, but we are willing to pay.”

Being blamed by the migrants is also a result of government rhetoric. The government often paints itself as the people's servant. When the rhetoric does not match the reality, the government is blamed. In the 2009 Incident, 14 hours after the office was blocked, some migrant workers started kicking the door of the office. A vice director of the Construction Bureau of County Z coordinating the dispute responded: "Do I owe you the money?" One migrant worker replied: "What officials have said shall count." Another said: "You officials shall do meaningful work for the masses!" Another added sarcastically: "We trust the Communist Party, who loves every citizen. The Party's door is forever open to the people [implying that the office's door is now closed]." Indeed, a national survey suggests that 53.57% of surveyed migrant workers believe that their wage plight results from the failure of government regulation (Ai 2007).

The belief that the government is omnipotent also contributes to the blaming. Migrants are unclear about, and do not want to know, the separation of powers in the government. When government officials dodge the problem and ask the migrant workers to file lawsuits, migrant workers often insist on holding the government officials responsible. In a collective incident, one official explained to the workers, "No matter whether you want to sell the developer's building, or file a lawsuit against it, you have to follow the procedures. Don't you know that the power of the government is exercised through the court?" Migrant workers responded, "If we go to court, then what is the labor bureau set up for? We want to the Wages Clearance Office and the Labor Bureau here to solve our problem!" One migrant said: "Last year in Henan Province, our boss disappeared, but the government there paid us."

***What constitutes evidence?***

One crucial divergence between migrant workers' perception of justice and the state version is what constitutes evidence. While the formal legal system has clear evidence rules, migrant workers do not even have a written employment contract. Our interviews found that they take their finished work as sufficient evidence. Whenever government officials dodge the request of migrant workers with the evidence requirement, they are impatiently rebuked. The following conversation is illustrative:<sup>3</sup>

Official: "Why did not you follow the law in the first place? How can you start work without a contract? Now that you claim they owe you the wage, what is the evidence?"

Migrant worker 1: "We workers only know the place to work is the place to be paid."

Migrant worker 2: "We do not care about contracts! We only know we have built the apartments, so we are asking for the wages!"

Migrant worker 3 said: "Evidence? Then we will flatten the construction site! You are asking for evidence! Do not you see the whole building standing there? We have worked, and our work is the evidence. Who are you speaking for?"

Migrant worker 4 said: "The fact that we have come to your office for help is self-evident. Otherwise why are we here?!"

Officials did not automatically dismiss the unsophisticated understanding of evidence. We observed that the government officials did not always check the identification of migrant workers who complained at the labor bureau. Sometimes the officials did not even know

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<sup>3</sup> All of the following statements were excerpts from the conversations between migrant workers and government officials.

migrants' names after the disputes were resolved. From their previous working experience, officials seemed to take the migrants at their word. In other words, migrants' conception of evidence, which is closely related to the Chinese culture that one gets paid after completing work, is partially validated and is thus reinforced by the officials.

This conception of evidence is so ingrained among migrants that even the courts, to solve the disputes, have to make compromises. The courts certainly have stricter requirements for evidence, but they have to loosen the requirement for migrants. Su and He (2010) find that in Guangdong, the courts dispensed procedural and evidence rules so to render decisions favorable to migrants. A district judge who has processed a large number of labor disputes in Beijing said,

These migrant workers come to court with no evidence at all: they have no labor contract, often just a sheet with their name and a check mark next to it, indicating they went to work on a certain day. Sometimes their only proof of having worked at a place or how much the boss promised to pay them is the testimony of the other workers, also co-defendants in the case . . . I estimate that, if these cases were strictly decided and tried in the same way as other civil cases, then 90% of the workers would lose. In practice though, they win in about 50% of cases. We cannot only consider the law, we also need to consider social stability--especially if it is a collective case . . . involving over 10 workers. Also, there are government policies (zhengce) calling for us to support migrant workers, especially right before the Spring Festival. (Halegua 2008: 310)

### ***When shall they be paid?***

Although the Labor Law stipulates that the payment shall be currency denominated and delivered monthly (Art. 50), interviewed migrant workers will accept late payments and are

accustomed to being paid after the entire project is over. During the working period that may stretch for months, they simply advance food or living costs only, which amounts to around 10% of the wages (Pun et al. 2010: 131). Paying lump sum at end of the project seems to be customary.

According to the Labor Law, labor arbitration must be initiated within 60 days of dispute (Art. 82). But the statute of limitation is an exotic concept to most migrant workers. More importantly, since the workers are willing to wait for a lump sum payment, it is unfair for the employer or the formal legal channel to deny payment. Migrant workers feel that they are subject to double standards when statute of limitation is invoked. The migrant workers' conception of justice cannot accommodate such a legalistic term.

Indeed, migrant workers do not resort to disruptive actions until they are desperate. Most of them would be patient even if the developer or the user company delays the payment after the completion of the work because it is short of cash. By the eve of the Spring Festival, the workers have lost patience. Our interviews with officials find that in this period the number of collective actions resulted from unpaid wages skyrocketed. This is because migrant workers have to go home to their families, usually after a year away. Their children need money for school, and elderly parents need medical care and wives need new clothes. As in the ballad "It is Them Who Owe Me!" it is unthinkable to go home empty-handed.

This timing has significant implications for the government's responses to disruptive actions. By the year's end, government officials have to react promptly facing wage-related collective actions, given the urgent need of the migrants. They do not have the luxury to behave like bureaucrats following the entrenched procedures. Rather, they act like firefighters or combat

soldiers. Once the fact that the workers have indeed worked for the project has been confirmed, officials urge the employers to pay within days, if not hours. The following telephone conversation between the director of the Construction Bureau and Boss Lin illustrates the urgency when more than 30 migrant workers stormed the office of the Construction Bureau on the eve of the 2009 Spring Festival:

Have you located any funding? We have not had dinner yet [because blocked by the migrant workers]! It is not that we do not understand you! Meanwhile the workers are here and become very agitated... There is a priority problem: they are from the area hard hit by the [2008 Sichuan] earthquake, they are living in a shed, women and kids are waiting for some meat for the Festival! The developer has already located part of the funding; you shall do your part. ...The payments for the construction materials are not the first priority (the boss argued that the materials they supplied were not paid); the unpaid wages are the most important! They have wives and kids to take care of. My voice has become raucous calling people. I command you, even if you are surrounded by the mafia, you must immediately call some colleagues to locate some funding, at least 0.4 million!

He then hung up on Boss Lin.

One official cast serious doubt on the formal legal channel:

Following the legislated procedure cannot solve these problems. Tens of unpaid migrant workers are staying at office. What do you do? Who pays their lunch boxes today? These are questions that need imminent solutions. It could take years if we follow the normal



procedure, notifying the companies through written documents, asking them to be consulted by appointment, and making changes according to our suggestions!

### ***How much shall be paid?***

Although the amount in dispute is clear in regular legal disputes, the exact amount of wage arrears is not. In practice, migrant workers usually agree upon a "naked" salary with their team leader (or the broker). It is "naked" because it excludes fringe benefits specified by the labor laws. The situation becomes complicated when the team leader does not receive the payment for his team from the user. In other words, the team leader himself could fall victim to the situation. As a result, getting money from the top of the food chain becomes the precondition for paying individual migrant workers. The original deal between the team leader and migrant workers is thus subject to change. Indeed, with a geographical, blood, or long-term cooperative relationship with the team leader, migrant workers are more of the ally than the enemy of the team leader; at the same time, the team leader needs to pay his team in order to maintain authority. The migrant workers thus cannot just chase the team leader for payment; they have to consider whether the leader was paid and in most situations, ensure that the leader is paid.

The situation becomes worse when the unpaid wages are used as leverage in the negotiations among the supplier, developer, and user company. For instance, when the user company does not receive payments from the developer, it may refuse to pay the wages but blame the developer. Indeed, the user company may even encourage, if not mobilize the migrant workers, to use disruptive actions as a means of exerting pressures on the developer. It is not unheard of for gangs of hooligans to be hired to participate in disruptive actions. That is why the Beijing municipality (*Xinhua Net* 2005) has passed laws punishing malicious wage claiming. In one collective protest, the vice director of the construction bureau of County Z repeatedly asked

if the team head really knew every participant. Under this circumstance, the amount of pay recovered would hinge on the interactions among all these parties.

### **How Perceptions Are Reinforced**

Migrant workers' understanding of justice, however, will not sustain if such disruptive tactics get them nothing. For instance, their perceptions that the government is culpable and can help obtain payments were validated, at least in part, by the response of officials or judges. The Wives Claiming Wages Incident, for example, quickly attracted nationwide media attention and with that came a resolution forged by multiple government agencies along with the employer at issue. In our fieldwork, we followed a wage dispute led by a migrant worker named Chen Ming. In the course of about three months, we watched the case migrated from one target to another, from one approach to another, from polite appeals to radical confrontations. The turning point for the wage claimants occurred when a group of angry workers smashed the door of the county's Stability Maintenance Office and rushed inside to sit in. The tumult that afternoon brought as many of nine county leaders from assorted government agencies, the police station and the court, to appear, including a vice party secretary and vice major. The company was ordered to pay the amount that was close to what the Chen Ming group asked for.

If the last section concerns the force that pushes migrant workers away from the formal legal channel, this section is about the "pull" factor that attracts them to disruptive actions. The government's reactions, especially the "balanced" strategy which often strikes a painful but encouraging finale, reinforce their perceptions. To understand this point, one only needs to see how nationwide laws and policies are enforced at the local level.

All these disruptive actions and the sadness that they reveal have not gone unnoticed by the central government. After Premier Wen Jiabao made efforts to collect unpaid wages for a peasant (*CCTV International* 2003), the central government has introduced numerous measures to help migrant workers get paid. For example, arbitration fees for migrant workers suffering economic difficulties are exempted, a debt-clearance office at the Construction Bureau has been set up, and arbitration and adjudication processes have been simplified. These changes have led some scholars to assert that migrant workers' grievances have been addressed (Croucher and Miles 2010).

The real situation, as we discovered in County Z and other grassroots jurisdictions, is less clear-cut. In addition to the universal gap between the law on the books and law in action, local governments have their own concerns. These governments do not want disruptive actions, which are troublesome and sometimes even dangerous. Moreover, the number of mass incidents is an important criterion by which to evaluate local officials' performance. In the current economic, legal, and labor environment, however, they are impossible to avoid. Local economic development remains a priority for local governments and officials. At a time when investments remain the driving forces of economic development, the confluence between economic interests and local politics seems inevitable: as the local governments expect a rapidly rising GDP, the business elite reaps the profits from cheap labor. The behavior of local officials has thus been heavily influenced by the need of the business sector.

In a way, local governments have been quite responsive to such disruptive actions and have been effective in helping deliver, mostly partial, payments. All arms of administrative branches, or in the words of Su and He (2010), a boundary spanning court, are involved in pacifying the disruptive actions and resolving disputes. They are responsive rather than

repressive not just because the officials sympathize with migrant workers, but also because they have to appease aggrieved workers for the sake of “stability politics” (Su and He 2010). Any mishandling of those incidents will put their political career at risk. At the same time, if local governments keep rewarding disruptive tactics, they tacitly encourage them. It is not surprising that some local governments have rounded up migrants for “violating social orders” or for “maliciously wages claiming.” Sticks and carrots are simultaneously employed in the so-called balanced strategy.

When a disruptive action erupts, government officials usually pressure developers and other business entities to pay the workers what they are owed. Once a portion of the requested amount is paid, the officials persuade the migrant workers to be satisfied with what they have been given. The following words of negotiation officials are telling:

“Please take this portion now, and come back for the rest later.”

“You know, in many places the migrant workers can only get the traveling expenses, you are much better already.”

“The final liquidation has not yet to be finished. We the construction bureau will make sure that they pay you then.”

In another incident in which the officials located 60% of the requested amount, the official in charge said bluntly,

“Various branches of the government have already tried their best, and this is it. For the rest, you may go to the courts, and our government will provide you with all the legal aid.”

“This is a market economy, in which the government cannot have all things taken care of. After all, we [the Construction Bureau] are not a law enforcement agency for many issues; we are not vested with authority to freeze or auction the property of others [developers or employers]. This power belongs only to the court, police and procuracy.”

In a negotiation immediately before the Spring Festival of 2009 between more than 100 migrants and the government, the director of the Construction Bureau of County Z announced,

Migrant worker comrades! The government must work for the people, but under the market economy, the government is not omnipotent. For problems unsolvable by the market, a legal path is inevitable, which means lawsuits... To get onto this path, as we discussed before, Longyang township government’s Labor Department and Justice Department, including all Justice Departments in County Z, will unconditionally provide legal aids to you for free, absolutely.

The official then became irritated: “Take it or leave it! If any of you take extreme actions, then the nature of the dispute is altered. Then I will be very sorry: you know the consequence!”

In most situations migrant workers take this partial payment and end their protest. In the collective incident involving 586,000 yuan in unpaid wages, the government and migrant workers reached the following agreements:

- 1) The developer promises to lend 350,000 yuan to the labor user company and migrant workers receive what they are owed multiplying 350/586 within a week; 2) the labor user company will be taken to judicial proceedings; 3) The Labor Supervision Department, the Construction Bureau, the Police will hold relevant

personnel of the labor user company liable and facilitate the realization of unpaid wages by administrative means (Menyang Township Government 2009).

Nonetheless, to pacify the conflicts is the ultimate goal. An official said to us: “Social stability is the first priority. As long as the disruptive actions are terminated, we are satisfied. Whether or not they will take the disputes to court later on is not important.” Of course officials are also clear that once the migrant workers have left, it is difficult for them to be mobilized again, since most of them will immediately go home (Authors Interview 2009).

As a result, not many requests for payment in disruptive actions were fully satisfied: our interviews with both the officials and migrants suggest that in most situations they only received 50 to 70% of the requested amount. Many migrants were certainly unhappy about the result, especially when they witnessed the weak responses of the officials to the businessmen. Partial payment is better than nothing, and they do need to take the money home for the Spring Festival. The temporary solution or the partial payment thus becomes the settlement.

Whatever the rationale of the governments, for migrant workers, the outcome is both painful and encouraging. As found by Su and He (2010), the *ad hoc* treatment of the government toward labor protest is effective and conciliatory. Although the payments are not full and always depend on the availability of funding, they are immediately delivered. This is very important because migrant workers cannot wait. This timely delivery distinguishes the administrative remedies from the judicial one. This relatively positive outcome, though far from perfect, does encourage more migrant workers to choose the administrative over the judicial channel. “This arrangement is, at best, a temporary cure for a serious problem” (Su and He 2010: 169).

But just like the local governments, migrant workers have to walk a fine line. They are also aware of the bottom line of the governments. On the one hand, they take care to limit the disruptiveness of their actions in order to avoid getting into trouble with the authorities. As the most deprived segment of society, they do not have many resources to deploy. Occasional innovations in their disruptive tactics only reveal their desperation and slim political opportunities. On the other hand, the governments also employ extra-legal methods as a short-term expedient. Legal aids, when invoked, sound more like a threat to than an invitation for migrant workers. Consequently, the law has become less relevant.

Migrant workers, business elite and local governments thus form a subtle equilibrium. At the end of the day, extra legal means become the routine and one could not care less about the formal legal channel. For both the governments and migrant workers, their tactics or strategies are determined by the social structure in which they are embedded. As a result, migrants' reasons for blaming the local governments, their unsophisticated understanding of evidence and social justice, and their discounted claims for compensations are reinforced.

### **“Beneath the Law” as Situated Legal Perception**

In Engel's (2005) study on the legal perception of a Thai woman, the heroine was involved in an accident when she had been uprooted from her village and was trying to make a living in a strange city. “With these changes came others that affected the conceptualization of her injury and the range of options she could imagine in response” (p.509). Buajan and Engel's other informants found themselves in a situation in which legal recourse became elusive, if not impossible. The Thais' turning to religion, rather than legal recourse, is analogous to the path taken by Chinese migrant workers in their use of disruptive tactics, as opposed to legal means. In

both cases, the aggrieved parties were convinced of the righteousness of their cause, but the details of legal proceedings for redress were beyond their grip. They found themselves beneath the law.

### ***The Cultural Percept of Justice and Its Violation***

In the Chinese case, wage claimants often have a strong case in the court of public opinion. That a simple wage dispute takes a long and tedious process reveals the problem of the system, not the workers' lack of familiarity with the legal system. In other words, Chinese wage claimants may not know whether or not they have a strong legal case, or even if they can afford to have one, even if the legal case is strong, but they do have a strong cultural one. They sense that they are beneath the law, and so they appeal to the court of public opinion. Unlike the situation in the U.S. in which procedural justice plays a significant role (Tyler 1990), the Chinese have long believed that substantive justice trumps procedural fairness (Michelson and Read 2011: 197). It is with this belief of righteousness that is deeply ingrained in Chinese culture that migrant workers, as disadvantaged as they are, dare to stage such disruptive actions.

Focusing on the “moral universe” of migrant workers who follow different routes in collecting unpaid wages, Thireau and Hua (2003) find that those who file complaints with the arbitration tend to frame the grievance as specific and individual, so as to meet legal standards, whereas those who file petitions with the Letters and Visits Office tend to stress a wrongful situation. The former requires working knowledge and the latter conceive a sense of justice that is not necessarily designated by the law. In our case, we find that the generalized sense of justice as documented in Thireau and Hua (2003) is the guiding force for the wage disputants. As wage claimants, they find their sense of justice in this particular issue—wage payment—is incongruent



with the law. For them, to be able to obtain one's pay after work is as simple a rule as the sun rising from the east. Any formal procedures, such as signing a contract beforehand and presenting court evidence in the dispute, that are supposed to help this justice be delivered, seem to be overcomplicating the matter at best and designed to deceive, to intimidate and to bully at worst.

Although migrant workers easily know that they have been wronged, this realization may have little to do with the law. In fact, in the evolution from their "perceived injurious experience" or "naming," to the articulation of whom to blame (blaming), to taking action to seek redress (claiming) (Felstiner et al 1980-1981), almost all of these aspects are incongruent with the law. Unlike naming, which is obvious for unpaid migrant workers, blaming is mutative. In other words, migrant workers' understanding of law is progressing as they start doing something about the wrong that was done to them. They usually come to the Labor Supervision Department, an informal administrative channel, the process of which informs and reinforces their perception of justice. Somewhere in the middle of this journey, they are at the crossroads of the formal legal channel and disruptive tactics. That their versions of justice differ from, or failed to meet the demand of, the law, they are left no recourse rather than protest or acts of desperation. "The dispute that ends up in court ...has been, necessarily, translated from raw, lay norms and descriptions, into legal categories" (Friedman 1989: 21). It is the failure of such translation that gives rise to the disruptive routes of conflict resolution as opposed to the formal legal channel.

How does the perception of justice inform the process in the journey, or the lack thereof, in such a translation? Our discussion follows two dimensions: the basic precepts of social justice, and the working knowledge of the legal system. The former refers to a commonsense and deeply ingrained principle in Chinese culture: one gets paid for one's work. As a migrant worker said to

us, “I must get my wages paid. No one can deny the right. I deserve the wages even if the project that I work for does not make money. This right [of getting paid] will be recognized in any society, and we can always find people who support us [on this].” This belief appears to be self-evident and impatient with any embellishment word twisting or sugar-coating.

The latter consists of a series of steps of awareness of how a seemingly simple matter is processed through the formal legal channel. This channel appears to be arcane, if not intimidating, or even conspiratorially vicious. As our discussion unfolds, it is clear that these two dimensions are not congruent with each other, as the initial attempt at redress fails to produce a prompt resolution of salary claims. This incompatibility and contradiction compels some migrant workers to take disruptive actions.

### ***Form of Resistance as Product of Culture and Situation***

As argued by many, legality is embedded and shaped by social structure or contexts (McCann 1999: 240; Marshall and Barclay 2003: 622). Recent studies have placed legal consciousness in an organizational and institutional context (Hoffmann 2003). Specifically, by situating legal consciousness across different groups, Nielsen (2000: 1087) argues that “the social location of subjects, and the experiences that arise from that location, are a vital part of our understanding of legal consciousness.” In China, where social inequality is rampant and the formal legal system is dauntingly inaccessible (Lee 2007; Ho 2010; Su and He 2010; Fu 2009), people’s view of the law differs markedly (He 2005; c.f. Santos 1977). This group of migrant workers’ perception of justice is shaped by their disadvantaged status vis-à-vis the political and business elite. They believe that their work shall be paid, but no one can be held to account. With the formal institutional channels either inaccessible or incompetent, some of them are left with

no alternative to disruptive actions. They believe all the parties they are dealing with are connected and should be collectively held responsible, so they blame the government, whose rhetoric professes to care about workers. By the same token, their perception of the timing of payment is related to their inferior position in the relationship with their employers. With little leverage, they have to accept delayed payments, until the eve of the Spring Festival. Similarly, their perception of evidence is due largely to the fact that they do not have a formal and written employment contract with the user company. When the job opportunity at some construction sites are the only thing they might be able to locate, and even this is made through the connection with their team leaders, it is too much a luxury to request them to sign a written contract before starting to work. Likewise, their view on the amount of wages is formed also because of their disadvantaged position. The balanced strategy of the government and the collusion between the government and business force them to accept a partial payment.

At the same time, the *ad hoc* practice of the governmental action rewards disruptive tactics by settling wage disputes. This is explained as a court with spanning boundaries, with other government branches serving as *de facto* courts (Su and He 2010). But unlike the most courts which require formal petitions, due process, and formal adjudication, this *ad hoc* court hastily “hears” cases often on the street, in favor of the workers who are able to make largest disruption possible. This feature of the governmental reaction reinforces the perception of the law and the practice of disruptive tactics. Unlike the deprived women in Hawaii studied by Merry (2003) where rights talks have been able to encourage more use of laws, migrants here receive no support encounters for using the law from surrounding environments. It is thus difficult for them to form rights-defined selves. Put differently, their perceptions of law are reproduced and reinforced by the operation of political and legal power and social structure.

The disruptive actions taken by migrant workers in China, in many aspects, are similar to “disturbance” as described by Ewick and Silbey (1998:204-213). Dressing as Spiderman (*Yangcheng Evening News* 2010) resembles “masquerade,” a form of disturbance by Ewick and Silbey’s (1998) informants. To attract higher ranking officials’ attention, Chinese migrant workers file administrative petitions or organize collective actions. This is not unlike “inversion” (Ewick and Silbey 1998: 209-213). Sitting in government buildings or construction sites recall the acts of “taking space” (Ewick and Silbey 1998: 217-219). Similar to disturbance, disruptive tactics generally do not overstep into the illegal turf, which may trigger severe repression of the state. They are strategic, trying to make the employer or the government look bad, and arousing public sympathy.

But disruptive tactics are more aggressive, noisier, more desperate, ad-hoc, and temporary than disturbances. While the resistance in the U.S. is mild, the tactics adopted by migrant workers in China are aggressive and even violent: individual and private resistance is escalated into collective and public actions. They also differ in terms of goals. Disruptive actions are pragmatic instead of symbolic: migrant workers in China need to have their problems solved. They are not satisfied with “narrating social structure” (Ewick and Silbey 2003); they want to be paid immediately. Subsequently, in migrant workers’ account, law is not only condemned, but needs to be confronted, defeated, and debated. For them, “might does not make right.” In other words, unlike the American downtrodden described by Ewick and Silbey (2003) who wage passive and private resistance “against the law,” Chinese workers stage disruptive acts that are not only proactive and goal oriented, but also public.

## **Final Remarks**

This study thus questions the extent to which protective legislation and more accessible legal institutions can change the current situation. Promulgating protective legislation and making labor arbitration and the courts more accessible will surely channel more migrants to test water in the formal institutions. For those who manage to wage legal battles against the employers, or those who combine collective actions with legal procedures, rule of law and legal rights might be part of their languages (Gallagher 2006; Lee 2007; Gallagher and Wang 2011).

While Chinese officials are pleased with this development, are migrant workers really better off? Viewed from the perspective of their perception of law and justice, choosing the formal legal channel means that they have to learn the legalistic language, prepare required documents and evidence, and tolerate the drawn-out formal process. However, being disciplined by the legal requirements is no guarantee that they will be better off. In work-related injury litigation, for example, Zheng (2005) argues that the situation is even worse. He finds that the employers, through controlling the medical record of the injured workers, rigging the employment relationship, and deterring co-workers from providing testimony, have minimized injured workers' possibility of receiving compensation in relevant litigation. Needless to say, the employers, as repeat players, would come out ahead (Galanter 1974; He and Su manuscript). Guiding migrant workers into the formal legal channel thus may paradoxically perpetuate the current disparity in power between the employers and migrant workers. Furthermore, for most others who do not have a written employment contract and can only find a short-term job at a construction site, going to arbitration and court remains unrealistic. As Felstiner et al. (1980-1981: 633) assert, "People make their own law, but they do not make it just as they please." The hostility of migrant workers to the law is a harsh reality, compared to the spirit of protective legislation that promises justice to its beneficiaries. By exploring the comprehension of law

among migrant workers, our findings and analyses suggest that strengthening the rule of law might not necessarily empower this deprived group.

Since naming is not a problem, to “awaken” legal consciousness of migrant workers though legal aid or legal education may not help much. They are fully aware that their rights have been infringed, but they prefer disruptive actions for strategic, tactical, and pragmatic reasons. In fact, as long as the current power relationship among local government, the business elite, and migrant workers is not substantively altered, technical or cosmetic improvements of the laws and legal institutions will be very limited in improving the rights protection of migrant workers. When local officials’ performance is still measured by local GDP and as their collusion with the business continues, it is expected that disruptive actions will remain a major means for migrant workers to get paid. The story of migrant workers in China, joining force with the research on racial and sex discrimination (e.g. Sarat 1990; Bumiller 1988; Smart 1990; Fineman and Thomadsen 1991), points to the underlying socio-economic structures in shaping legal consciousness and the route of legal mobilization.

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**Table 1: Number of informal complaints and labor arbitrations in County Z (2004-2008).**

|      | Informal Administrative Complaints | Labor Arbitrations | Ratio between Arbitration and Complaints |
|------|------------------------------------|--------------------|------------------------------------------|
| 2004 | 362                                | 10                 | 2.76%                                    |
| 2005 | 482                                | N/A                | N/A                                      |
| 2006 | 365                                | 73                 | 20.00%                                   |
| 2007 | 316                                | 26                 | 8.22%                                    |
| 2008 | 407                                | 13                 | 3.19%                                    |

Note: N/A = not available.

Source: Authors' fieldwork investigation.