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Title

Legal Preemption in China: How Government Legal Aid Squeezed Out Barefoot Lawyers and Labor Non-Governmental Organizations

Abstract

For over two decades, China has implemented its strategy of “legal preemption” by granting individual legal rights to workers and encouraging their enforcement through litigation. This strategy is designed to promote stability by preempting workers’ tendencies towards collective action and thus undermining their collective power. Nonetheless, some space remained for unlicensed “barefoot lawyers” and labor non-governmental organizations (NGOs) to provide meaningful assistance to workers by representing them in litigation. This article argues that even those limited openings are narrowing as China’s legal preemption strategy deepens: the government not only seeks to steer workers into the litigation process, but also control who represents them in that process and what tactics they may use. Specifically, the government ramped up its own legal aid programs, in which licensed lawyers beholden to the state represent workers, in order to squeeze out unregulated barefoot lawyers and labor NGOs. The article describes how and why this was done. The article then analyzes the implications of this transition for the future viability of labor NGOs, workers’ ability to find legal representation in administrative cases (against the government) or collective disputes, the quality of legal representation for workers, and China’s legal preemption strategy.

Keywords: China, labor rights, legal aid, labor non-governmental organizations, migrant workers

I. Introduction

For over two decades now, China has engaged in a “legal preemption” project of granting individual legal rights to workers and encouraging their enforcement through litigation. These steps are not a means of empowering workers, but an effort to promote stability by preempting their tendency towards collective action and ultimately undermining their collective power (Friedman and Lee, 2010; Lee and Shen, 2011). Nonetheless, this legal framework still provided some openings for unlicensed “barefoot lawyers” and non-governmental organizations (NGOs) to build collective consciousness and advance worker rights (Xu, 2013). This article argues that even those limited openings are now closing as China deepens its legal preemption strategy by not only pushing workers into the litigation process, but also controlling who represents them in that process.

In the summer of 2015, Chinese authorities called for strengthening the provision of state-sponsored legal aid to migrant workers. A few months later, the Guangdong police interrogated over 40 individuals affiliated with four labor rights NGOs, detaining seven people and eventually charging four with crimes. This article argues that these two trends—expanding government legal aid and limiting the space for NGOs—are closely linked as part of a broader legal preemption program. Whereas legal representation by unlicensed “barefoot lawyers” and labor NGOs was tolerated for a period of time, since the mid-2000s, the Chinese government ramped up its own legal aid programs in an effort to squeeze out these other actors. This transformation tightens the government’s control over what types of cases get litigated and the tactics used.

The article proceeds in three sections. The first analyzes how barefoot lawyers and labor NGOs came to be such a significant source of legal representation for workers, noting the

unwillingness of licensed lawyers to take such cases and limited availability of government legal aid. The next section argues that the government bolstered the formal legal aid system with the intention, at least in part, to squeeze out barefoot lawyers and labor NGOs, and notes its success in doing so. The final section discusses the significance of this transformation, including the implications for the future of labor NGOs, the availability and quality of legal representation for workers, and China's legal preemption program.

This article draws largely upon the author's interviews and observations since 2009. In particular, during research trips to China in winter 2014, summer 2015, and winter 2015, over 100 individuals with direct knowledge of labor relations in China were interviewed, including labor NGO staff, workers, legal aid officials, trade union officials, judges, labor arbitrators, law school clinic staff, lawyers, and academics in Shenzhen, Guangzhou, Hangzhou, Shanghai, Beijing, and other cities. Interviewees are not identified by name in order to maintain their anonymity. The author also engaged in a review of Chinese news articles, government reports, NGO reports, academic publications, and other sources.

II. China's Labor Rights Enforcement Landscape

A. Labor Rights and Enforcement Options

In the planned economy period, when virtually all enterprises were state- or collectively-owned, China's labor relations were largely governed by administrative and political arrangements. But this began to change in the "opening and reform" period as new forms of enterprise ownership emerged. The passage of the *Labor Law* in 1994 then laid the foundation for a contract-based system between employers and workers (Cooney et al., 2013: 23-47). Employers were to sign written contracts with workers that contained terms consistent with the

Labor Law's minimum standards on the payment of wages, working hours, overtime, and other topics (Friedman and Lee, 2010). This system was to apply to both urban residents and migrant workers—rural farmers who came to the cities to find jobs, numbering 190 million in 1995 and over 270 million two decades later.

In the decade after the *Labor Law* was issued, however, violations of basic labor rights were rampant. Common problems included, among other things, failure or sometimes refusal by employers to pay wages, using labor dispatch arrangements to skirt legal obligations, excessive work hours and failure to pay overtime premiums, not paying social insurance contributions, and frequent workplace injuries and occupational disease (Chan, 2001).

China's trade union proved virtually useless in enforcing labor standards or helping aggrieved workers seek redress (Friedman and Lee, 2010), leaving workers with two official avenues to address labor violations. The first is filing a complaint with the local labor bureau, which can investigate the alleged violation, order the employer to correct the problem, and issue fines. But local labor bureaus were short-staffed, unmotivated, and biased in favor of business and against migrant workers (Cooney et al., 2013: 73-74). The second is the formal dispute resolution system, which includes four stages: conciliation, mediation, arbitration, and court litigation. Conciliation and mediation are voluntary, but all "labor disputes" must be filed with the labor dispute arbitration committee (LDAC). Either party may appeal the LDAC's decision to court, and the court's decision may be appealed again to a higher court. Since at least 2010, roughly half of the cases that entered labor arbitration proceeded on to litigation (Halegua, 2016). Work injury and occupational disease cases have additional steps that further complicate the process.

The Chinese government actively encouraged workers to “use the law as your weapon” (Gallagher, 2005) and enforce their legal rights (Liu, 2013). This legal preemption strategy is largely motivated by the government’s fear of the alternative—namely, workers engaging in workplace strikes, public demonstrations, or protests outside government buildings. Workers followed the government’s directive, litigating more and more claims each year. Whereas 48,000 arbitration cases were filed nationwide in 1996, this number grew to 260,000 (2004), 350,000 (2007) and then 715,000 (2014) (*China Labour Statistical Yearbook*, 2015). But the path to justice was often riddled with obstacles, particularly for migrant workers who lacked education, knowledge of the law, and social capital in the cities where they worked (Halegua, 2008). Problems in using litigation included a short statute of limitations, high filing fees, a lengthy process with multiple stages, workers being turned away for lacking written labor contracts, and difficulties enforcing judgments. Many workers thus had no choice but to resort to the other “destabilizing” means of dispute resolution.

China sought to address the above issues by passing the *Labor Contract Law* and the *Labor Dispute Mediation and Arbitration Law*, which took effect in 2008. The former sought to encourage employer compliance through measures such as creating penalties for failing to sign a labor contract and discouraging the use of dispatched labor arrangements. The latter statute aimed to make the dispute resolution system more accessible and efficient for workers by eliminating filing fees for labor arbitration, extending the statute of limitations, requiring that ordinary cases be decided within 45 days, and limiting employers’ ability to appeal.

Since 2008, Chinese authorities also placed an enormous emphasis on mediating labor disputes before they enter arbitration. A multitude of mediations institutions now exist within enterprises, in neighborhoods, or at local justice bureaus, legal aid offices, and trade unions

(Zhuang and Chen, 2015; Li Y et al., 2016). This web of institutions is an important part of the government's strategy to maintain social stability, because mediation has the potential to resolve conflicts before they intensify into a strike, protest, or petition to the government. Mediated agreements are also more likely to actually be enforced, instead of giving rise to an appeal or petition, thus bringing finality to a case. After the 2008 legislative reforms created new causes of action for workers and lowered the gates to the courthouse, mediation was also a tool to reduce the ballooning LDAC and court dockets. Indeed, since 2010, more cases have been processed by mediation organizations than by LDACs each year. Attempts at mediation also continue even after the case is filed with the LDAC or court, and more arbitration cases now get resolved through mediation than by a decision (*China Labour Statistical Yearbook*, 2014).

Despite the legislative and institutional reforms around 2008, legal violations remained ubiquitous, even if their specific form changed (Halegua, 2016). For instance, while more workers have labor contracts, employers compel them to sign blank contracts or refuse to provide them with a copy. The unpaid wages epidemic not only persisted, but grew worse by some measures. Although workplace deaths declined in the last decade, the number of workers sustaining injuries or contracting occupational diseases like silicosis remains significant.

B. A Lack of Quality Legal Services

Legal representation is often necessary, or at least very helpful, for workers to vindicate their rights through litigation. Many substantive and procedural aspects of the labor law remain quite complicated and understanding local practices on a particular issue may be essential (Halegua, 2016). In mediation, where the mediator and employer may both be pushing for a settlement (Zhuang and Chen, 2015), a worker may be more easily intimidated without

representation. Despite this need for legal representation, however, workers are often unable to obtain it.

While the number of Chinese lawyers exploded from a few thousand in the 1980s to over 270,000 in 2014 (Li W, 2015), many are not interested in representing workers. The first impediment is financial. Regulations prohibit lawyers from using a contingency fee arrangement in labor cases, in which the lawyer only collects fees if the client recovers money; this means the fee must be collected up front. In the large cities, lawyers regularly demand at least RMB 3,000 for each stage of litigation, and more typically over RMB 5,000—more than many workers can afford or would be willing to pay. Further, even if a lawyer is willing to accept a contingency or partial contingency fee, he may have difficulty collecting it because workers sometimes flee without paying their legal fees. For example, the lawyer Zhou Litai, who represented over 12,000 injured workers in Shenzhen, reported that 700 clients owed him RMB 5 million in legal fees (Feng, 2012). Class action procedures, which would facilitate representing groups of workers each with small claims, do not exist in China (Fu H, 2014). Labor cases also may involve multiple appeals and procedures that cause them to drag on for many months or even years. Moreover, lawyers also state that workers are very emotional about these cases and can be very hard to satisfy (Halegua, 2016).

Representing workers, particularly in collective disputes or those linked to NGOs, may also involve some political risk. This crackdown on rights-protection lawyers and the arrests of labor NGO staff in 2015 underscored this danger. But, in fact, the government issued numerous measures in recent years to monitor attorneys and steer them away from sensitive disputes. For instance, lawyers are restricted in communicating with the media about certain cases. Lawyers are required to report their involvement in any “mass cases,” meaning ten or more plaintiffs, to

the local government and bar association. Guangdong's bar association even has special rules for labor cases: lawyers handling collective or sensitive labor disputes are not to intensify the conflict; not to provoke workers to petition (信访), engage in a protest, or otherwise disrupt social order; and should report the "possibility" of a petition, protest, work stoppage, or strike to the relevant authorities (Halegua, 2016). Further, in the past few years, numerous labor NGO activists have been detained, a law school labor rights clinic in Suzhou was shut down, and a labor research center at a university in Guangzhou was forced to close.

The scale of the state-run legal aid system was also quite limited up through the mid-2000s. While some experiments with legal aid centers began in the 1990s, the national system administered by the Ministry of Justice (MOJ) and local justice bureaus was not formally launched until the State Council issued the *Regulation on Legal Aid* in 2003. It makes legal aid available to individuals facing "financial hardship" who have legal needs in any of six areas, including wage arrears. Local governments are tasked with defining "financial hardship" and are free to broaden the types of cases that qualify for legal aid. While justice bureau staff sometimes provides legal representation itself, in most urban areas the justice bureau will determine the applicant's eligibility for legal aid and then refer the case to a private law firm or lawyer. The law firm or attorney is provided a fixed stipend for their work, generally unrelated to the outcome of the case. In 2013, the average stipend for private lawyers nationwide was RMB 835 (*Yearbook of Legal Aid in China*, 2013).¹

This legal aid system was initially largely inaccessible to migrant workers. A 2008 government survey found that over 40% of migrant worker respondents had not even heard of legal aid (*Yearbook of Legal Aid in China*, 2008). Other workers feared that any government-run program must be biased in favor of local employers. Many migrants were deemed ineligible for

legal aid because they lacked a local *hukou* (household registration) (Halegua, 2008). The “financial hardship” standard in many cities was set so low that even a worker earning minimum wage would not qualify (Fu H, 2010). Legal aid officials also frequently turned down collective disputes, sensitive cases, or workers who are unlikely to prevail, such as those lacking a written labor contract or strong evidence. There are reports that China’s legal aid system only provides representation to one in three or one in four applicants (China Legal Information Center, 2015; Fu H, 2010).

Unable to retain a lawyer or obtain legal aid, an NGO report obtained by the author found that only 36% of workers in Chengdu’s LDACs had a legal representative. Even in 2014, only 52% of workers litigating in the courts in Jilin Province had any form of legal representative (Wang S, 2016). Undoubtedly, many more workers who were unable to find legal help simply gave up on their claims long before filing a formal complaint. Thus, a large gap existed between the demand for legal services and the supply of willing lawyers.

C. Barefoot Lawyers and NGOs Fill the Void

Individual barefoot lawyers and labor NGOs helped to bridge the “representation gap” (Halegua, 2016) by providing legal services to migrant workers. One type of labor NGO that developed is staffed by licensed lawyers who represent workers before LDACs and in court without charging a fee. The Zhicheng Migrant Worker Legal Aid and Research Center and Yilian Labor Law Legal Aid and Research Center, both located in Beijing, best exemplify this model. These groups receive funding from both the Chinese government as well as foreign foundations and international development agencies. They are connected to formal law firms registered with the local justice bureau. Since Zhicheng and Yilian were created in 2005 and 2007, respectively, they have each regularly represented workers in over 1,000 cases per year.

The second type of labor NGO that engaged in litigation work did not have licensed lawyers on staff. Under this model, NGO staff themselves represented parties pursuant to the “citizen-agent” (公民代理) provisions in the *Civil Procedure Law* and *Administrative Procedure Law*, which essentially allowed a party to choose any other citizen to appear in court on his behalf so long as no fee was charged. There were also a large number of professional barefoot lawyers, sometimes called “citizen agents” (公民代理人), who used this same legislative provision to represent workers and charged either a contingency fee or a flat fee below what licensed lawyers would charge. Many barefoot lawyers were former workers who gained litigation experience through their own disputes with employers, but lacked a lawyer license or any other certification.

Prior to 2008, particularly in Guangdong, barefoot lawyers thrived. Their low cost, willingness to take a contingency fee, and superior ability to communicate with workers made them very popular (Halegua, 2016). A 2009 government report found, and scholars have confirmed, that 50 labor advisory services existed and 500 barefoot lawyers were operating in Guangdong alone, and labor disputes were a major source of their work (Croucher and Miles, 2010). One former barefoot lawyer reported that there were easily 100 people like him doing primarily labor cases just in Shenzhen. In 2010, the labor lawyer Duan Yi estimated that these individuals could earn between RMB 5,000–6,000 per month—five or six times Shenzhen’s minimum wage at that time. Indeed, one Shenzhen judge interviewed by the author estimated that barefoot lawyers represented nearly half of all plaintiffs in civil cases before her, many of which were labor disputes. A court in Zhongshan reported that they appeared in 25% of labor cases in 2013 (Tan, 2015). This phenomenon also extended outside of Guangdong: a court in Beijing found that barefoot lawyers were involved in 50% of cases there in 2011 (*Legal Daily*,

2011). Researchers estimate that at the time Nanjing had 150,000 registered lawyers, there were 100,000 citizen agents (Chung and Chung, 2016).

Labor NGOs in Guangdong also blossomed in the 2000s. After a period of political tightening following the 1989 events in Tiananmen Square, NGOs in China “experienced a new boom” in the period from 1995 to 2008 (Franceschini, 2014). By 2007, some estimate that there were approximately 50 labor NGOs in the Guangdong region, more than half of which are in Shenzhen (Franceschini, 2014; Xu, 2013). One comprehensive accounting of labor NGOs in 2013–2014 put the number at nearly 100 (Li Chunyun, 2016; see Howell, 2015; Fu D, 2016). Many of these groups engaged in legal education activities, conducted know-your-rights trainings, and assisted workers in litigation (Howell, 2015; Froissart, 2011; Lee and Shen, 2011; Croucher and Miles, 2010). For a period, this legal aid work was tolerated by local governments who saw it as consistent with their rule of law program (Lee and Shen, 2011) and strategy of legal preemption.

One academic researcher found that 17 of the labor NGOs in China provided direct legal assistance to workers in litigation (Li Chunyun, 2016, personal communication). Some provided these services for free, but others charged a small flat fee or used a contingency arrangement. The latter approach was actually more attractive to many migrant workers, who are generally skeptical of any free service; it was also less threatening to the government, who could view these activities as a commercial enterprise (Franceschini, 2014; Lee and Shen, 2011). At least one organization reported performing over 300 legal aid cases per year (Xu, 2013). Another NGO leader stated that he himself handled 1,300 cases over the years. Kan Wang (2012) writes that, “In Guangdong Province, labor NGOs represented workers in more labor dispute case than those of the official legal aid centers and trade unions [put] together.”

Barefoot lawyers and NGO staff also approached the litigation work differently than licensed lawyers. While the former often had some political or emotional commitment to helping workers, the “overriding priority” for most commercial lawyers “is to protect and enhance their livelihood,” which means abstaining from any activity that could threaten their law license or “compromise their legal practice” (Liu and Michelson, 2010). By contrast, barefoot lawyers are not accountable to a bar association or regulated by any government body. These differences manifest themselves in important ways. Barefoot lawyers and NGO staff are more willing to take on sensitive cases, such as collective disputes or administrative litigation. They are more willing to resist the pressure that arbitrators and judges put on workers to settle their claims during mediation (Zhuang and Chen, 2015). Further, due to their contingency fee arrangement, barefoot lawyers are motivated to maximize the recovery in a case, whereas lawyers collecting a flat fee are incentivized to resolve the matter as quickly as possible.

Barefoot lawyers and NGO staff were also more willing to employ a wider variety of tactics to achieve their final objective, including extra-legal ones. For instance, if unsatisfied with an arbitration decision or court ruling, advocates might coach workers that petitioning the local government, or even threatening suicide, could result in a more favorable outcome (Fu D, 2016). A group of workers might engage in some form of collective action, such as a protest or even blocking traffic to get the government’s attention (He, 2010). These advocates may also use tactics *within* the litigation process, but outside of what a licensed lawyer would do. In one such case, the worker suffered a workplace injury but lacked documentary evidence of his employment at the factory. So before filing a work injury claim, despite the worker having been paid properly, the NGO sued the employer for unpaid overtime. At the hearing, the employer readily provided detailed time and pay records. The worker lost the overtime case, but now had

the evidence needed to bring his work injury claim. In a similar situation, the labor NGO instructed the worker to pick a quarrel with a coworker, which caused the police to come and prepare a report that documented his employment at the workplace. Some labor NGOs encouraged workers to go observe litigation proceedings to put pressure on the arbitrators and judges (Fu D, 2016).

III. Deepening Legal Preemption: Legal Aid Replaces Barefoot Lawyers and NGOs

In the late 2000s, the government began to expand its formal legal aid program and contract the space for barefoot lawyers and labor NGOs. These two developments were neither independent nor coincidental. Labor NGOs were perceived as a destabilizing threat, and restricting their ability to provide legal aid was a strategy to limit their influence.

A. The Legal Aid, Barefoot Lawyer, and NGO Nexus

The clearest statement of this linkage between government legal aid and labor NGOs is found in a leaked report by the Guangdong Provincial Committee on Politics and Law, dated January 2009, entitled *Investigative Report of Guangdong Province on the Question of “Professional Citizen Legal Agents.”*² It reports that there are 500 professional citizen agents in the province, including individuals (mostly former workers), legal practitioners who use this method of representation, and “rights protection” organizations, some of which are “instigated or funded by foreign sources” and “pose a direct danger to social stability.” Several examples of such organizations are provided, including the center headed by Zeng Feiyang in Guangzhou and the Women and Gender Study Centre based at Zhongshan University. The report goes on to explain the conditions that gave rise to these citizen agents, the activities engaged in by the allegedly destabilizing organizations, and how the government should respond.

The primary reason cited by the report for the prevalence of barefoot lawyers is the lack of accessible legal services. According to the report, lawyers use an “unyielding” fee structure that steers them away from labor disputes. The legal aid system is “highly inaccessible,” covering only a limited range of situations. It is also “under-resourced” and “capable of offering only very limited services and ... far from being able to meet the objective demand in the legal services market.” Accordingly, there is “little wonder” that barefoot lawyers, filing cases either for free or on a contingency fee basis, were “so marketable among” workers.

The report also reveals that the government disapproves of the extra-legal measures that barefoot lawyers and labor NGOs engage in to “make a bigger impact” or put “more pressure on the government in order to improve their chance of winning.” Specifically, these NGOs are accused of instigating their clients to petition the local government or court officials “rowdily and doggedly,” embarrassing local officials and “slandering the government,” and bringing workers together “collectively” to block traffic or create other “mass incidents.” The report also criticizes their willingness to get journalists to publicize their dispute. But the “destabilizing” NGO tactics enumerated in the report even include actions within the litigation process, such as putting forward “unreasonable demands” in arbitration or repeatedly appealing to the courts. Part of the problem is that no government agency has clear authority over these barefoot lawyers.

Having concluded that barefoot lawyers’ proliferation stemmed from a paucity of available legal services, the report proposes strategies to both make it harder for citizen agents to operate and make government legal aid more readily available. The first prong should include the public security bureau “keeping an eye” on these NGOs and more oversight by the LDACs and courts. The second prong involves expanding free mediation services to resolve conflicts early and increasing the availability of legal aid so that “there will be less space for the

professional citizens' legal agents." In addition, the trade unions "must play a bigger role" in protecting the rights of workers. Furthermore, this strategy of expanding legal services and pushing out citizen agents was not limited to Guangdong, but also pursued by other localities, including Beijing and Shanghai (Li G, 2013; *People's Court Daily*, 2012).

B. Expansion of the MOJ Legal Aid System

The legal aid system was previously quite hard for migrant workers to access, and prior to 2005, MOJ did not even collect data on how many migrants received legal aid. This began to change with the issuance of the State Council's *Opinions on Solving the Problems of Migrant Workers* in 2006, which instructs that legal aid be more readily available to migrant workers. Most critically, the financial hardship requirement was to be waived for migrant workers with wage arrears or work injury claims, which constituted a huge proportion of labor cases. Thus, whereas under 76,000 migrant workers received legal aid in 2005, now over one-third of legal aid recipients are migrant workers (430,000 in 2013) and employment claims are the most common type of civil case (National Legal Aid Work Statistics, 2012–2013).

[Insert Figure 1]

After receiving the above directive, Shenzhen issued its own *Regulation on Legal Aid* in 2008 to build a legal aid system that was very accommodating of migrant workers. Legal aid was not limited to those with a local *hukou*. Migrant workers with a wage arrears or workplace injury case also need not demonstrate financial hardship. After the local justice bureau approves an application for legal aid, most cases are handled by private lawyers, who receive RMB 3,000 for each stage of the litigation.

While some problems still exist in implementing the above eligibility rules, since 2008, Shenzhen has provided legal aid to a significant, growing number of workers. Funding for the

system reached RMB 10.2 million in 2013, a 41% increase over the prior year. By 2014, Shenzhen handled over 18,000 civil legal aid cases (*Southern Daily*, 2015). An unpublished NGO report found that virtually all legal aid recipients in Bao'an and Longgang counties, and 60-70% of recipients in other counties, are migrant workers with labor issues. Municipal-level legal aid officials in Shenzhen further report that no qualified applicants are ever turned down due to a lack of funds, and they are confident that more money would be made available if needed.

Guangzhou has similarly taken steps to increase the quantity and quality of legal aid provided to migrant workers with labor grievances (Guangzhou Municipal Legal Aid Bureau, 2014). The number of civil cases nearly doubled between 2012 and 2013. Legal aid officials increasingly have a backgrounds in law. The stipend paid to lawyers was increased by roughly 50% in 2013 to RMB 2,300–2,600 per civil case. The municipal legal aid bureau also notes ten programs it has instituted to better serve migrant workers, including setting up legal advice stations at labor markets, assigning a lawyer the same day that a worker applies for legal aid, hiring workers to spread the word about legal aid, and assigning lawyers to help groups of migrants with unpaid wages problems.

C. Growth of the Trade Union Legal Aid System

National regulations also encourage other “social groups,” such as local trade unions or women’s federations, to provide legal aid in order to supplement the MOJ’s program. China has a single, state-sponsored trade union, which is structured and operates like a government ministry: the All-China Federation of Trade Unions (ACFTU) (Friedman and Lee, 2010). In 2008, the ACFTU issued the *Trade Union Legal Aid Measures*, instructing local unions to offer free legal services to workers. Migrants with claims for unpaid wages or work injury need not

demonstrate financial hardship. By 2013, the trade union had 43,000 legal aid staff and handled 130,000 legal aid cases that year (ACFTU, 2014); it also participated in 1.5 million labor dispute mediations between 2011 and 2015 (*Workers' Daily*, 2015). Further, the ACFTU launched a three-year plan (2014–2016) to develop a “legal specialists corps,” which involves growing the number of union staff with a college degree in law from 2,041 up to 3,000, and the number of licensed lawyers from 500 to 1,000 (Zhang and Zheng, 2014).

The legal aid workstations created by local trade unions not only have staff that often provide legal advice and represent workers, but sometimes contract law firms to provide these services. Over 100 such workstations exist in Guangdong Province (Guangdong Provincial Legal Aid Bureau, 2014). In Shenzhen, the trade union primarily pays law firms to provide legal aid to workers, offering a stipend of RMB 3,000 per procedure and more for a group case. In 2008, the union’s legal aid budget was only RMB 3 million and it provided representation in approximately 400 labor disputes; however, by 2012, the trade union reportedly handled over 2,000 legal aid cases involving nearly 7,700 workers (Luo, 2013).

D. Blocking the Path of Citizen Agents

While legal aid was expanding, the government was clamping down on barefoot lawyers and NGOs providing legal services. In 2007, eight government departments in Shenzhen joined together to limit the ability of NGOs to serve as the legal representative of workers (Howell, 2015; Xu, 2013). Indeed, the January 2009 investigation report noted that efforts were already underway by “[t]he courts and associated departments” to “keep the professional citizens’ legal agents in check and to squeeze their room of operation.” For instance, courts in the city of Zhongshan required barefoot lawyers and their clients to provide documentation of the nature of their relationship and to sign a statement in court that no fee is being charged (Wang, 2013).

NGO advocates reported that similar measures were instituted in Shenzhen, Guangzhou, and Dongguan. Further, citizen agents were required to produce certifications from the police in their hometown confirming that they did not have a criminal record. Some LDACs and courts capped the number of cases in which a non-lawyer could appear each year. Courts also began to blacklist certain advocates and even prohibit them from observing the litigation proceedings.

The trade union also sent a message that, at least by 2012, it did not support NGOs engaging in legal aid work. In that year, the Guangdong trade union set up a structure to purchase services from various NGOs—the Federation of Social Service Organizations for Guangdong Workers. However, the union only supported “more seemingly apolitical activities” like legal education, training on life skills, and cultural activities; no legal aid projects were funded. This was part of a broader trend towards “welfarist incorporation” in China by which the state partners with civil society groups to provide welfare services but continues to harass and repress those engaged in advocacy or rights work (Howell, 2015; see Fu D, 2016).

The citizen-agent provisions in China’s *Civil Procedure Law* and *Administrative Procedure Law* were also amended, in 2012 and 2014, respectively, to further restrict who could appear on behalf of a litigant. The revised legislation only permitted unlicensed advocates to appear in court (1) when the representative is the party’s close relative, or (2) the representative has obtained a recommendation letter from either the party’s employer, the residents’ or villagers’ committee where the party lives, or a “social organization.” Employers will not issue such letters to encourage suits against themselves. Advocates report that obtaining letters from the other quasi-governmental entities has also proven difficult, thus making it almost impossible for non-lawyers to represent workers in legal proceedings (Halegua, 2015).

E. A Transformed Landscape

The government's strategy to reign in professional barefoot lawyers and NGOs from representing workers in litigation has largely succeeded. By the end of 2014, a former barefoot lawyer remarked that it was now hard to find such an individual in Shenzhen. Many NGOs have either moved away from directly representing workers or adapted the manner through which they provide legal assistance, such as focusing on preparing workers to appear by themselves in court. During interviews with the author, labor NGO advocates consistently noted that among the reasons for this transition were both the increased difficulty for non-lawyers to represent workers in litigation and that the free government legal aid, and workers' increased awareness of it, made unlicensed NGO staff (who also sometimes charged fees) less attractive. As Franceschini (2014) notes, although workers are generally skeptical of free services, they are more trusting of the state and its institutions. For this reason, even the labor NGOs in Beijing staffed by licensed lawyers have seen their caseloads decrease as government legal aid becomes more ubiquitous.

IV. Discussion

The transformations described above have significant implications for the future of labor NGOs, the representation available to workers, and understanding China's legal preemption strategy.

A. NGO "Radicalization" and Government Crackdown

In one sense, the government's strategy of limiting NGO's "destabilizing" influence by frustrating their legal aid work backfired. Several of these NGOs instead focused almost exclusively on more sensitive areas—collective bargaining and assisting striking workers. The well-known organizations headed by Zeng Feiyang and Zhang Zhiru are two such examples. Ironically, Zhang initially started doing legal aid work to lower his profile after filing a petition

with 10,000 signatures to reform the labor arbitration system (Lee and Shen, 2011). But already frustrated by having done hundreds of legal aid cases and seeing little improvement in labor conditions, the inability to represent workers in litigation catalyzed their transition into collective work. Similarly, Duan Yi and his Laowei law firm in Shenzhen, having grown disillusioned with litigation after years of representing aggrieved workers, shifted focus to supporting collective bargaining efforts (Fu H, 2014).

On the other hand, however, by causing NGOs to engage solely in sensitive activities concerning collective disputes (Fu D, 2016), the government's policies had succeeded in making it easier to justify suppressing these now "radicalized" groups. Further, the elimination of legal aid work made labor NGOs even more reliant on outside funding from foreign sources—a red flag for the government (Howell, 2015). Indeed, the reasons for the detention of Zeng Feiyang and several of his former colleagues in 2015, as explained in the Chinese official media, included his relationship with foreign funders and his alleged role in "inciting" factory workers to strike and engage in other disruptive behavior. This government crackdown has since had a chilling effect on labor groups nationwide, making them even more hesitant than usual to take foreign funds or engage in collective bargaining or related activities. Unable to represent litigants and too afraid to work on collective issues, NGOs' options for protecting the rights or advancing the interests of workers are certainly narrowing.

B. Administrative Litigation and Collective Disputes

As a preliminary matter, some number of workers who might get help from barefoot lawyers will not receive government legal aid, either because they do not know about it, are not eligible for it, or simply do not trust it. But more fundamentally, workers will struggle to find

representation in administrative or collective disputes as legal aid officials, focused on preserving stability, are unlikely to assign lawyers to such matters.

Before the *Administrative Procedure Law* was amended, barefoot lawyers handled up to one-third of the administrative cases in some localities (Halegua, 2015). The most famous example is the blind barefoot lawyer, Chen Guangcheng, who brought lawsuits on behalf of disabled people, forced sterilization victims, and other aggrieved villagers. Lawyers, concerned about their license, are far more hesitant to sue the government. Labor NGOs have also used administrative lawsuits to prompt government action. For instance, several groups have sued the government for failing to respond to a workplace safety complaint; in one case, the inspector came and prohibited the use of a dangerous machine. In Guangzhou, an NGO challenged the labor bureau's refusal to launch an investigation on behalf of all the employees of a particular employer even after several individual worker claims had been filed. Several labor NGOs have sued local labor bureaus for not fulfilling their legal obligation to front the compensation owed to work injury victims who are awaiting payment from their employer.

Legal aid officials, after hearing that a citizen hopes to sue their colleagues or superiors, are unlikely to rush to provide them with a lawyer. In 2014, the legal aid system handled over 1.24 million total cases but only 5,800 administrative matters. Legal aid was only provided in 206 administrative cases in Guangdong in 2013 (Guangdong Provincial Legal Aid Bureau, 2014). And, most of the labor-related administrative cases that are approved involve the denial of government benefits to an individual; not more fundamental government wrongdoing.

While private lawyers are also reluctant to get involved in collective disputes, barefoot lawyers and labor NGOs had a reputation for handling them, including cases in which workers engaged in extra-legal measures (*People's Court Daily*, 2012). In one dispute involving 80

workers, the LDAC refused to accept the case and the licensed lawyer basically gave up. An NGO leader then encouraged the workers to protest outside the LDAC until the collective case was accepted. Once it was, the NGO referred it back to the licensed lawyers. Legal aid officials increasingly feel pressure to take action when approached with collective disputes, but they handle them quite differently. Striving to diffuse the conflict and maintain order, their initial response is generally to push for a quick resolution through government mediation. If the matter must be litigated, one legal aid official noted that the plaintiffs are likely to be divided into smaller groups, each of which is assigned a different lawyer. But it is almost unthinkable that a legal aid office or lawyer it appoints would alert the media or suggest the workers block traffic or protest. If anything, they would dissuade them from doing so. Even a licensed lawyer working at a legal aid NGO condemned workers who petitioned or protested for partaking in illegal and “excessively radical behavior” (Lee and Shen, 2011).

C. Nature and Quality of Legal Representation

Legal aid recipients and worker advocates regularly complain about the poor quality of representation provided by the appointed commercial lawyers, claiming that they lack motivation, are inexperienced in labor law, and are too focused on settling cases as soon as possible. Since law firms are only handling these cases out of obligation, and they receive a fixed stipend regardless of the outcome, lawyers “often do not take such work seriously” and seek to resolve them as quickly and cheaply as possible (Huang, 2015). Firms therefore assign young or retired lawyers to these cases, or sometimes even unlicensed legal assistants (Guangdong Provincial Legal Aid Bureau, 2014). But more seasoned attorneys may still know little or nothing about labor law. This lack of lawyer motivation translates into workers feeling that

lawyers pay insufficient attention to their case, discourage them from pursuing more complex claims, and pressure them to settle.

D. Implications for Legal Preemption

The trends discussed in this article are not only further evidence that China's rule of law project is one of legal preemption, designed to maintain stability by controlling conflict and undercutting workers' collective power, but also mark a new frontier in this effort. The growth of government legal aid is consistent with the state's goal of steering disgruntled workers off the streets and into the litigation labyrinth, where grievances become legal claims pursued by atomized individuals (Friedman and Kuruvilla, 2015). Even collective disputes, if they cannot be quickly mediated, are disaggregated into individual claims or litigated by smaller groups of workers. But this article further shows that China also wants to control how the litigation process is used and who represents workers in it. The government only supports use of the legal system when it serves its own ends (Xu, 2013), which means individual workers peacefully and patiently pursuing their legal claims (Fu H, 2014). Unregulated barefoot lawyers who mobilize workers to gain leverage for their legal claims by petitioning, protesting, or appealing to the media therefore get replaced by licensed lawyers, who can be kept on a tight leash. Whereas scholars debated whether labor NGOs in China might be able to build any degree of class power through their legal aid work (Lee and Shen, 2011; Xu, 2013), those who study lawyers seem confident that they are "not likely to become the vanguard of political change" (Liu and Michelson, 2010). However, while this strategy has generally preserved stability thus far, whether it can continue to stem the rising tide of strikes and labor turmoil in China remains to be seen.

Notes

¹ In June 2016, one U.S. dollar was equal to roughly RMB 6.6.

² An English translation of the report by China Labor News Translations is available at:

² An English translation of the report by China Labor News Translations is available at:
<http://www.clntranslations.org/article/51/citizen-agents>.

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Figures

Figure 1. Migrant Worker Cases and Total Civil Cases Handled by MOJ Legal Aid System (2005–2014) (Halegua, 2016)

