RULE WITHOUT LAW: CHINA’S ECONOMIC SLOWDOWN AND CRACKDOWN ON LABOR ACTIVISM

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ABSTRACT

In late 2015, the Chinese Communist Party arrested scores of labor activists and rights-defense lawyers and revoked the licenses of labor NGOs. While many scholars have labeled the attack on the labor movement as a part of the Communist Party's wider crackdown on civil society, the unprecedented crackdown on labor activism coincided precisely with a similarly unprecedented trend: slowing economic growth. Using institutional analysis, I demonstrate why decentralized legal authoritarianism in China is only sustainable in times of economic growth. The regime has targeted labor activists as a means to impede the exercise of center-granted labor rights that imposes high costs on an unstable economy. The conclusion nuances the idea of "GDP/performance-legitimacy" in the context of growing rights consciousness, and reveals how China’s authoritarian government will rule in contravention of its own labor laws as a survival strategy if its economy continues to falter.
Many thanks to my friends and colleagues in Asian Studies
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Jennifer R. Mayer
# Table of Contents

Introduction ........................................................................................................................................... 1

Power Decentralization and Rights Agitation ...................................................................................... 3

Legal Authoritarianism and Rights Consciousness ............................................................................. 5

The Roles of Rights Lawyers and Labor NGOs ................................................................................... 9

Economic Decline ................................................................................................................................. 13

Growth Slowdown, Labor Crackdown ................................................................................................. 17

Alternative Explanations ..................................................................................................................... 19

Theoretical Implications ...................................................................................................................... 23

Conclusion ........................................................................................................................................... 25

Bibliography ......................................................................................................................................... 27
Introduction

In the summer, they came for the rights lawyers...in the winter, they came for the labor activists.\(^1\)

In the summer 2015, the Chinese Communist Party (CCP) initiated a large-scale crackdown on lawyers. Across the country, more than three hundred lawyers with active caseloads were taken into custody; some were detained for hours, others, months. In the end, over three dozen lawyers were charged and convicted with various crimes, from “picking quarrels and causing fights,” to the serious charge “endangering state security.”\(^2\) Human rights groups around the world condemned the crackdown as unprecedented in both scale and intensity, even for the authoritarian Chinese state. Yet, the purge was not over. In the winter of 2015, state security rounded up labor activists working in non-governmental organizations (NGOs), concentrated in the manufacturing center of Guangdong. The labor activists received similarly harsh treatment as the lawyers.\(^3\) Though the NGO crackdown was smaller in scale, only amounting to about fifty activists, the knock-on effect was immense. Dozens of underground labor advocacy organizations shut down due to fear of reprisal, not only in Guangdong, but across the country.\(^4\)

At first glance, the reason for the crackdown seems almost too obvious: China is an authoritarian country. Lawyers and activists of any stripe are dangerous for a regime that suppresses the rights of its people. While in broad strokes this deduction may be true, it does not explain why China has been encouraging the knowledge of labor rights among citizens for more than two decades, or why the CCP has simultaneously moved to strengthen the power and prestige of the judiciary. Furthermore, the vast majority of these lawyers and activists were not

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2 For a complete breakdown of the case details, see: China Human Rights Lawyers Concern Group, 维权律师关注组织, “[709 Crackdown] Latest Data and Development of Cases,” 6 May 2016, web.
advocating for democracy, freedom of speech, or any of the other rights typically blamed for “endangering social stability.” Rather, these lawyers are more accurately described by the Chinese term “维权” (weiquan) which means rights defenders; lawyers and NGOs are not agitators working to expand the scope of legal rights by challenging the state, they act as defenders of rights that already exist under national law. If lawyers and NGOs are working to defend the “rule by law,” why are they a threat to the regime? Activists in China and in the international community tend to answer that the crackdown is part of a larger campaign against civil society itself, or that the crackdown is because of Xi Jinping. However, broad segments of civil society are still functioning, and there has been no obvious change in elite perspectives to precipitate such a crackdown. Additionally, neither of these alternative explanations answer the “when” question: why is the CCP cracking down on lawyers and labor activists at this point in time when lawyers and activists always constitute a political threat?

The answer lies not in elite politics nor in characteristics of general authoritarian governments, but rather in the contradictions of China’s domestic institutions. The twin forces of local accumulation and central rights protections resulted in a central government that encouraged the use of the law by citizens to hold local officials accountable to central policy. Protecting citizen rights incurred costs on the economy; ensuring that businesses paid their workers and state-owned enterprises (SOEs) funded pensions has real-world costs. The cost of protecting worker rights negatively impacted the economy, however, the cost to growth and development was worth the legitimacy benefits gained by the CCP. However, I argue that this

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5 Of course, it is impossible to know about the personal beliefs or statements of every member of these groups. However, in general, liberal rights advocacy is still too risky in China, and activists keep any such views away from the broader movement.

6 I am indebted to Ching Kwan Lee for the concept of “decentralized legal authoritarianism” which informs the theoretical section of this paper, though there is variation from her original theory.
model of decentralized legal authoritarianism is not sustainable. In an era of slowing GDP growth, the CCP cannot afford the costs of protecting citizens’ rights. To reduce the dangers of the economic restructuring program and promote faster development, the CCP has several options for dealing with worker rights. Since coercion on masses of citizens would risk true instability, the CCP has found an escape route: eliminate the link between the law and the expression of the law that is enacted by lawyers and activists. At precisely the moment in which layoffs in SOEs and the private sector manufacturing workers are looming, the regime is cracking down on labor NGOs and lawyers as an end-run around the conflict between economic development and the legalization campaign. In order to avoid being exposed by labor advocates as reneging on its promises, the CCP severed the connection between rights written in the law and rights expressed in reality.

This paper will proceed in four sections. First, I will explain the concept of decentralized legal authoritarianism, particularly in the context of rights agitation. Second, I will explore the dynamics of legal authoritarian states and the rising “rights consciousness” in China through purposeful government action. Third, the paper will explore the differentiated roles of lawyers and labor NGOs in the process of legalizing civil-society relations. These first three sections will elucidate the institutional and social systems that provide context for China’s economic slowdown and the ensuing effects on the labor movement. To conclude, I will refute several alternative explanations, and end with remarks on the theoretical and policy implications of China’s unstable legal authoritarianism.

**Power Decentralization and Rights Agitation**

In order to understand the dynamics of Chinese civil society, it is necessary to explore the institutional structures whose interaction affects state-society relations. The first of these
structural causes is political decentralization. In the reform period, Deng Xiaoping famously opened China up to the outside world. The marketization process is incomplete by Western standards, which has created a system of “socialism with Chinese characteristics.” The process of reform and opening has not just affect China’s economic structure, it has also changed the character of the relationship between the state and its citizens.7 In the PRC’s communist past, Chinese citizens relied heavily on the state. In the danwei system, the state directly provided benefits from housing to jobs. After reform and opening, the “iron rice-bowl” was broken as SOEs were privatized. This constituted a transformation from a unit-system model to a state-citizen model.8

With the decreased state role in the economy, local officials were made responsible for the economic development of their areas. In an era in which “to get rich is glorious,” the state evaluation system for cadre evaluation and promotion—known as nomenklatura from the Soviet system—is based upon local economic growth. Cadres who are successful at attracting businesses and foreign development are promoted, which is an incredible change from a mere two decades before, when cadres were judged with an ideological yardstick.9 Consistent with the greater change in state-society relations, local governments also became responsible for the provision of welfare benefits, including healthcare and education. Money is remitted from central coffers to local officials via the Tax Sharing System, but there are strings attached.10 Officials

8 Ibid. 61.
have to use the central funds to meet nationally-mandated environmental, healthcare, hygiene, and labor standards.

However, this puts local officials into a bind. On one hand, their personal career is tied to economic development, so self-interest encourages cadres to put growth projects above all other governance considerations. On the other hand, local governments are also responsible for the welfare of their citizens. Predictably, self-interest often trumps public interest, and local accumulation often supersedes—or even tramples over—citizen needs.\(^\text{11}\) Incentives for local development has led to mistreatment of citizens, often workers. For example, across the country, cadres have protected businesses from paying migrant workers’ wages and refused to provide pensioners’ SOE benefits.\(^\text{12}\) However, for citizens there is a remedy to local exploitative practices: leveraging civil rights enshrined in national law.

**Legal Authoritarianism and Rights Consciousness**

The second institutional factor to be explored is the increasing legalization of China. It seems counterintuitive that the CCP would use law as a tool to battle the negative effects of decentralization; the concept of “rule of law” seems anathema to non-democratic political systems. However, authoritarian regimes have a long history of instrumental use of the law, and indeed, the term “rule of law” was first used to describe illiberal regimes.\(^\text{13}\) “Legal authoritarianism” is a well-discussed typology, studied in regimes as diverse as Singapore,

\(^{11}\) There has been movement in China in recent years to reform the cadre evaluation and promotion system to encourage adherence to central standards and promote citizen welfare; however, development still takes precedence for local cadres. For a discussion, see: Thomas Heberer and René Trappel, 2013, “Evaluation Processes, Local Cadres’ Behavior, and Local Development Processes,” *Journal of Contemporary China* 22 (84): 1048-1066.


Vietnam, Zimbabwe, and Egypt.\textsuperscript{14} In essence, authoritarian governments use courts to pursue their interests, often by maintaining political control over legal outcomes. Often called “rule by law,” legal authoritarianism has several benefits. Law allows regimes to maintain social control, bolsters regime legitimacy, strengthens bureaucratic compliance within the regime, and facilitates trade and investment by ensuring protection of property rights.\textsuperscript{15}

A well-constructed legal authoritarian regime increases regime stability, which is best demonstrated by the example of Singapore. The small city-state’s judiciary provides strong protection to civil and business rights, but is controlled by the People’s Action Party when the law intersects with politics.\textsuperscript{16} The result is a vibrant business environment and a stable relationship between the regime and the outside world, though Singaporeans pay the price in terms of political and personal freedoms.

Since reform and opening, China has moved to create a stable legal authoritarianism on the Singaporean model. While this model is beneficial for the afore-mentioned reasons, legalization of state-society relations was partly a reaction to the Cultural Revolution (CR). The complete breakdown of order demonstrated the necessity for strong rules, as the CCP Central Committee declared in 1978: “Procuratorial and judicial organizations must guarantee the equality of all people before the people’s laws, and deny anyone the privilege of being above the law.”\textsuperscript{17} In the wake of the CR, the CCP implemented a number of reforms to increase the power of law in the Chinese system. First, throughout the 1990s the CCP increased the status of the judiciary itself:

\textsuperscript{15} This is particularly important in a Leninist system, in which obtaining information about the situation “on the ground” is muddled by the political incentives of mid-level bureaucrats, but is essential for top-level decision making.  
increased educational requirements for justices, renovated thousands of courthouses, revised the court funding system, and provided funds for public legal aid. Second, the CCP promoted citizen awareness of rights via a series of five five-year “legal dissemination campaigns” that began in 1989. Through mass media, such as TV shows produced by state media bodies and study campaigns at the local level, the CCP estimated that 70 percent of citizens had obtained knowledge about their rights under national law. Third, law firms were privatized in 1998; from the founding of the PRC, lawyers had only represented client interests after state interests. After privatization, lawyers had to protect client interests, transforming them from proxies of the state to potential rights defenders. Finally, in an informal reform, the growing group of NGOs were permitted to teach clients about their national legal rights.

Complementing the rise of the judiciary is the rise of law itself, including protections for workers’ rights. The adoption of a Labor Contract System in 1979 within the Equity Joint Venture Law, the National Labor Law in 1995, and the Labor Contract Law in 2008 took place amidst an explosion of CCP lawmaking. Between 1966-1978, seven laws were enacted by the National People’s Congress (NPC); in 1979-1998, 327 laws were passed by the NPC while 750 regulations were issued by the State Council.

From these CCP-instigated reforms, the judiciary grew in importance, the laws grew in number, and lawyers and NGOs were empowered to help clients protect their national rights against local officials. This “within-system” advocacy was encouraged by the CCP. Following

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19 Stern 2013, 22-23.
20 Ibid. 158-168.
the rubric of legal authoritarianism’s benefits, for the CCP, empowering the judiciary: provided
an outlet for citizen dissent in a controlled setting, stabilized regime legitimacy by avoiding the
CR’s excesses, informed CCP elites about problems on the ground, and encouraged critical
foreign direct investment for China’s economic rise.

The conscious CCP reforms to the judiciary and increasing range of law has had
consequences for the public. Over the past few decades, there has been a growth of “rights
consciousness” among citizens.23 Workers are aware of national laws and regulations that protect
them from the excesses of the local state. In Wong and Zheng’s 2011 study on migrant workers,
over 70 percent were familiar with their rights in the National Labor Law, while between 30-40
percent knew their rights from other workplace laws.24 Moreover—and somewhat surprisingly—
workers have a relatively high level of trust in judicial institutions. In Landry’s groundbreaking
survey, Institutionalization of Legal Reforms in China, the courts and the procuratorate were
rated the most trustworthy of Chinese public institutions (except the CCP, which has a clear
“correct” answer in these surveys, and may or may not reflect actual opinions), ranking above
the news media, government offices, and village committees, among others.25 Given the short
life span of China’s legal institutions and their well-known shortcomings, there is a remarkable
level of institutional diffusion that coincides with rising legalization of the civil-society
relationship and rights consciousness.

Of course, mere knowledge of law and trust of the institution is not enough; rights must be
translated into action to matter. O’Brien and Li describe action that flows from knowledge as

23 There is a debate among academics as to whether Chinese citizens are “rules conscious” or “rights conscious,” for
rightful resistance: “a form of popular contention that operates near the boundary of authorized channels employs the rhetoric and commitments of the powerful to curb the exercise of power…rightful resistance entails the innovative use of laws, policies and other officially promoted values to defy disloyal political and economic elites…”26 In China’s complex legal system, rightful resistance exists because of the institutional setup of decentralized legal authoritarianism, and is channeled through rights advocates: lawyers and labor NGOs.

The Roles of Rights Lawyers and Labor NGOs

The crucial channeling mechanism of rights advocates in the legal system is clear when contrasted with the alternative methods citizens have to voice discontent. Citizens can use the xinfang (letters-and-visits) system, a Mao-era relic of mass-line ideology, to lodge their complaints with local governments. Theoretically, it provides a Leninist alternative to an authoritarian legal system.27 However, the xinfang system has many deficiencies, in short, it is overused, understaffed, and rarely facilitates communication or effective solutions.28 Petitioners tend to be successful when they lodge xinfang petitions and then use “radical” tactics like sit-ins and marching to bring attention to their plight. Street protests, especially those that impede economic activity, constitute a threat to “social stability,” and can prompt quick official response.

However, there is danger in collective petitions, especially those that link protestors from multiple factories, cities, or regions. The regime is quick to repress this type of protest. For example, after the massive SOE layoffs in Liaoning Province in 2003, labor activists combined protests from several factories to create one massive demonstration against local malfeasance.

27 Chen 2012, 15-22.
28 Ibid., 87-102.
The central government responded by throwing the leaders into detention and sentencing them to decades in prison.\textsuperscript{29} This demonstrates the risk of collective protest, even as protests in China have become widespread. Today, there are assuredly more than the 87,000 “collective incidents” that the Public Security Ministry recorded in 2005 (the last time it published such data).\textsuperscript{30} The China Labor Bulletin, a Hong Kong-based NGO, estimates that there has been an 11-fold increase in labor contention alone since 2011.\textsuperscript{31} Since this level of protest has become “the new normal,”\textsuperscript{32} the regime has a certain tolerance level for street dissent. As such, protests do not generate regime anxiety as they did in the past, which translates to lower protest success.\textsuperscript{33} In this way, the risk of repression and the decreasing effectiveness of protests encourages citizens to access the third option for redress of grievances: the judicial system. The turn to the courts is reflected in the number of litigated cases. The number of cases brought to court has increased dramatically; in Guangdong province alone, there were 175,000 labor dispute cases between January and August 2008, which constitutes a 260 percent increase from the previous year.\textsuperscript{34}

Lawyers and labor NGOs play a crucial role in the increase of litigation and accessing of the judicial system, what Charles Epp calls “making rights real.” He argues that while rights consciousness is a necessary precondition, the most important variable for successful outcomes is the ability of rights advocates to build organizational capacity and be “repeat players” in the litigation game.\textsuperscript{35} Considering lawyers first, they have a crucial role in all stages of the litigation

\textsuperscript{29} Lee 2007, 101.  
\textsuperscript{30} Chen 2012, 27.  
\textsuperscript{32} “Workers’ struggle continues as China’s economic growth slows to 6.7 percent,” \textit{China Labor Bulletin}, 15 April 2016, web.  
\textsuperscript{33} Chen 2012, 182-186.  
process. The Chinese court system is very complex, and the cards are stacked against the poor and politically unconnected.\(^{36}\) As Stern succinctly writes, “Lawyers’ fluency in the language in the law makes them a natural asset in beating back local protectionism, submitting evidence, and talking a case into acceptance by courts.”\(^{37}\) Considering that the sensitivity of a case is the first consideration of the court, lawyers play a crucial role in the courtroom, proving the worthiness of the case and couching the argument in terms of “rightful resistance” instead of outright resistance. Lawyers also work as counselors, encouraging their clients to continue the case in the face of intimidation or stalling tactics. Even with a strong legal team, workers face an uphill battle to have their day in court; without lawyers, workers have virtually no chance of success. The advocacy role that lawyers play is crucial inside and outside the courtroom in translating rights to action in the face of local malfeasance.

Labor NGOs are more constrained in their activities, often due to their unregistered status. Chinese NGOs must go through an intensive registration process with high barriers to entry, including required state sponsorship by a government-organized non-governmental organization (GONGO), a mass organization, or an agency,\(^{38}\) as well as an expensive registration fee and a list of members. These barriers often threaten the very goals that the organization is trying to achieve. As such, many labor organizations are unregistered networks of activists that are vulnerable to suppression by security services and unable to open bank accounts or rent office space.\(^{39}\) However, the relatively disorganized nature of labor NGOs has some advantages. Since the local government does not have an official list of members, these organizations are less

\(^{36}\) Stern 2013, 47.

\(^{37}\) Ibid. 50.

\(^{38}\) The term “GONGO” seems oxymoronic. The nature of these semi-state agencies is disputed by academics, with some seeing these organizations as an extension of the corporatist state, while others view GONGOs as state-approved contributors to the variety of Chinese civil society.

legible to the state. Informal networks of activists are more resilient to infiltration by security services, and have the ability to rebound after repression. Furthermore, these organizations are inherently local, and are often familiar with the particular legal and political system of a city or town. In this way, labor NGOs act as a bastion of institutional knowledge. Finally, labor NGOs provide a crucial educational role, increasing awareness of the national law, and how local situations influence individual cases. For example, the Sunflower Women Workers’ Center in Guangdong serviced 100,000 female workers in the Panyu manufacturing district by: teaching dance classes, providing mental health services, negotiating with Qinyi jewelry factory for back wages, and helping workers in Sumida factory set up their own trade union. Thus, labor NGOs fulfill a number of informal roles, picking up the slack between government organizations and lawyers. The need for this informal—and free—legal aid is demonstrated by the popularity of issue-based NGOs, which have grown exponentially in recent years.

While labor NGOs often operate in an uncertain legal environment, labor activists often strive to keep their activities within the confines of China’s labor law. Zhang Zhiru, NGO activist and advisor to workers, advised a course of “rational resistance” that operated within the bounds of legal and social acceptability: “marching on public roads and other socially disruptive action not only harm public interests, they will also invite popular criticisms against our legal activism.”

Though lawyers and NGOs operate in the legal system, there is differentiation of responsibility between the two groups. Lawyers act as formal advocates, helping workers move

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41 Gallagher 2001, 200 (footnote 81).
their grievances through the official channels. Lawyers purposefully limit their advocacy to legal issues, as a form of self-protection but also to improve the quality of rule of law in China, case-by-case. Labor organizations perform an educational and advocacy role to increase the knowledge of workers and proactively protect them from exploitation. In different ways, lawyers and NGO activists are able to leverage center-granted rights against economically-driven powers at the local level. For example, in the famous Gaolaida case in 2008, workers—with the assistance of legal counsel and NGO organizational knowledge—were awarded by a local court nearly one million yuan in back wages and additional compensation from the company’s frozen physical assets and cash accounts, which drove the corporation out of business.

To reiterate, both lawyers and labor NGOs have largely been permitted by the regime to fulfill these roles within China’s legal environment to bring the informational and legitimacy benefits to the CCP, even at the expense of the economy. Without the advocacy and activist roles of these two groups, dissatisfied workers would struggle to defend their rights.

**Economic Decline**

The important story that runs parallel to decentralized legal authoritarianism, legalization, and rights consciousness is China’s economic miracle. Since Deng’s economic reform program went into effect, China has experienced an average of 10 percent GDP growth per year. The marketization of the economy has lifted millions of people out of poverty, as the poverty rate

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44 As is clear in this example, the successful enforcement of workers’ rights legislation against the local factory incurred a cost on the local economy. It is impossible to know the extent of damage to the economy through the work of lawyers and labor NGOs, but considering that roughly 50% of workers’ legal cases result in remuneration for the workers, and the number of legal cases in one province is in the thousands, we can imagine that the magnitude of the cost is quite large. See: Su Yang and Xin He, 2010, “Street as Courtroom: State Accommodation of Labor Protest in South China,” *Law and Society Review* 44 (1): 157-184. For additional study of the cost of remuneration, see: Joseph Cheng, Kinglun Ngok, and Heng Qu, 2008, “NGOs and migrant workers’ rights protection – a case study of the document management service center for migrant workers in Panyu, Guangdong,” *The Journal of Comparative Asian Development* 7 (1): 114.
declined from 85 percent in 1979 to 5.1 percent in 2014.\textsuperscript{45} The story of China’s rise into an economic powerhouse has understandably overshadowed the changing state of society, but the economic situation itself allowed for these changes to occur. First, the CCP gains legitimacy through economic growth and improvement of the situation of the common man: “GDP-legitimacy.”\textsuperscript{46} In an era that rejects communism in favor of capitalism,\textsuperscript{47} the CCP has shed its image as an ideological party. No longer is decision making “politics first,” rather, economic concerns trump issues of socialism. For example, in the early 1990s, the CCP changed business ownership laws, and officially allowed privately owned companies to hire more than eight workers.\textsuperscript{48} Even more heretical, in 2002, Jiang Zemin welcomed entrepreneurs and businesspeople to join the ranks of the CCP under the guise of the “Three Represents.”

Previously, entrepreneurs were considered one of the exploitative “class enemies,” so the CCP incorporation of capitalists was a wholesale revision of forty years of ideology.\textsuperscript{49} These decisions increased the power of the CCP to grow the economy, but at the expense of long-held Maoist ideological prescriptions.

\textsuperscript{45} The poverty line indicated here is the percent of the population living in “extreme poverty” of less than $1.25 per day; China has significant percentages also living below the line of $5 per day. These measures do not capture the full extent of China’s income inequality issues. See: World Bank Group, 2016, \textit{Global Monitoring Report 2015/2016: Development Goals in an Era of Demographic Change}, Washington, DC: World Bank.

\textsuperscript{46} Some scholars use “performance legitimacy,” which captures measures of governance as well as economic growth. See: Zhu Yuchao, 2011, “‘Performance Legitimacy’ and China’s Political Adaptation,” \textit{Journal of Chinese Political Science} 16 (2). However, even scholars of this orientation agree that economic growth and provision of jobs is the most public and important metric of performance legitimacy, so I prefer the term “GDP-legitimacy.”

\textsuperscript{47} Though in many ways China is capitalistic, it is far from a free market. The state owns large sections of the economy and has control over capital flows and banking. Though the CCP labels China as “socialism with Chinese characteristics,” China scholars call it “capitalism with Chinese characteristics.” See Huang Yasheng, 2008, \textit{Capitalism with Chinese Characteristics: Entrepreneurship and the State}, Cambridge: Cambridge University Press, 233-299.

\textsuperscript{48} The seemingly arbitrary cut-off of eight workers comes from Marx’s famous analysis on the exploitation of workers and alienation of labor, in which the factory hired eight laborers.

With GDP growth undergirding regime legitimacy, the CCP is under pressure to maintain a high level of growth. Without the ideological pillar of Maoism, “GDP-ism” is vital for regime survival; but in 2014, the regime’s legitimacy became threatened. The effects of China’s creaking economic structure became apparent, and China’s economic growth slowed for the first time since reform and opening. GDP growth in 2014-2015 was 7.8 percent and 6.8 percent respectively, and the CCP’s projection for 2016 is 6.3 percent. While this is very respectable economic growth by the standards for developed countries, it is far lower than the 10 percent average growth of the last decade. Furthermore, some economic analysts doubt the CCP’s official statistics, and put China’s growth at about 5 percent, which is close to the global average for emerging economies of 4.5 percent.\(^5\) The cause of the slowdown is the subject of much discussion, both within and outside of China.\(^5\)

Though the economic planners in the CCP recognized after the 2008 financial crisis that China must convert from a low-wage manufacturing economy to a service and innovation oriented economy, implementation was delayed until after the leadership transition. In a major policy speech in November of 2013, Premier Li Keqiang announced major changes to the role of the state in the economy, including in nationalized industries like telecommunications, energy, and railways.\(^5\) However, economic restructuring plans were slow to arrive; the first step was a

\(^5\)“World Economic Outlook 2015: Adjusting to Lower Commodity Prices,” *International Monetary Fund*, October 2015, 2.

\(^5\)Slowing growth has been attributed by the IMF and other analysts to the slowdown in manufacturing for export, flat consumer consumption, and the worldwide glut of basic commodities, including steel. Additionally, labor wages are rising in China (in part due to the work of lawyers and labor activists), and companies that once flocked to China are now fleeing to other low-cost countries in Asia. China’s unstable and opaque financial system as well as high levels of local government debt have become more apparent of late, which has been made clear by the bailouts of large state-run banks and the recent stock market crisis.

relaxation of private sector banking announced in March of 2014 and implemented in February of 2015.\textsuperscript{53}

Throughout 2015, the economic restructuring plans picked up steam. The CCP announced plans to reduce overcapacity in coal, mining, steel, glass and aluminum sectors; reduce restrictions on private financing; encourage domestic consumption rates; and decrease the risk of state bank default by raising bars for local government projects.\textsuperscript{54} The vast majority of these projects were slated to begin in late 2015 and early 2016.

While the scale of China’s current program of reform should not be underestimated, there is precedent for this level of state-led restructuring. In the late 1990s, the CCP implemented a SOE policy of “letting go of the small, holding on to the big.” As a result, millions of workers in the state-led economy lost their jobs. Laid-off workers lost state-provided benefits, including healthcare and housing. Often, their wages were denied, as corrupt officials privatized SOEs for their personal benefit. Official malfeasance and economic desperation led to wide-scale protests, especially in the Liaoning Province protests mentioned earlier, where coal and steel production dominated. The state used a combination of repressive and negotiating tactics to decrease tensions with workers, but in the 1990s, the state had a significant advantage. While the state economy was contracting, the private economy was booming. Many of the laid-off SOE workers started their own businesses, were employed by township and village enterprises (TVEs), or found work in the underground economy.\textsuperscript{55} While pensioners and laid-off workers considered

their situation to be sub-par, they were absorbed into the new economy, and did not challenge the regime’s restructuring plan or its legitimacy.

However, the coming economic transition will not resemble the 1990s; this time around, China’s laid-off workers will not have the abundant opportunities to find new jobs. Rather, there will be a huge number of laid-off SOE workers competing with an already large pool of migrant workers in the coastal regions. The CCP estimated that 1.8 million workers in steel and coal sectors alone would be laid off, while a Chinese investment bank estimated 3 million, and international economists estimate between 4-6 million.\textsuperscript{56} With the state economy contracting, and the private sector with flat or slowing growth, where will these workers go? How will they protect their rights?

**Growth Slowdown, Labor Crackdown**

The role of lawyers and NGOs in China’s increasingly legalistic environment as protectors of central-granted rights against local governments is a political bargain. In exchange for the benefits of legal authoritarianism, China paid an economic cost in the form of labor rights protection. The cost of litigation and activism was worth it while the CCP’s concern about the economy was “overheating,” or growing too quickly. But in 2015, economic growth was slowing, and painful economic restructuring was looming. Factories in China’s coastal regions were moving offshore as wages rose, with massive layoffs in the state sector on the horizon. At precisely this moment, the CCP cracked down on lawyers across China and labor NGOs in some of the largest cities, especially in Guangdong. In an open letter, labor rights center Nanfeiyan outlined the extent and abruptness of the change in state behavior:

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\textsuperscript{56} Zheng Yangping, “Overcapacity may lead to 3m layoffs,” *ChinaDaily*, 13 January 2016, web.
“In 2012, many NGOs in Guangdong blossomed as never before: many groups were able to obtain NGO registration, and receive government funding to provide services. Between 2013-2014, Nanfeiyan also began to receive government funding for operating social work programs. However, the conditions changed abruptly at the end of 2014…at first, the government suddenly cut funding for NGOs…[and] from around the end of 2015, we felt the government began to suppress a select group of NGOs. Our space for survival has sunk to its lowest, and we’re on the brink of extinction (emphasis added).”^57

The crackdown itself was unprecedented in scale and brutality. Nationwide, security services arrested hundreds of lawyers.^58 Labor NGOs, including Panyu Labor Center, Nanfeiyan Labor Center, Sunflower Women Workers’ Center, and dozens of other registered and unregistered organizations were forcibly shuttered, deregistered, and their activists were arrested. In the span of a mere nine months, the CCP eviscerated the lawyers and labor NGOs that advocated on behalf of workers, both inside and outside the courtroom. In other words, the CCP removed the link from awareness of rights granted by the central government and the exercise of those rights. Rightful resistance cannot be realized in the legal context without lawyers and labor NGOs available to “make rights real.”

The CCP’s recognition of this linkage is clear in the coverage from official state media regarding the arrests of various activists. For example, in its article on the Panyu District Court’s ruling on the Nanfeiyan Labor Center activists, Xinhua highlighted “The defendants ignored national laws and organized mass gatherings that disturbed social order. Their acts, of a severe

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^57 南飞雁社工中心 (Nanfeiyan Labor Center), “‘此路不通’之南飞雁的公开信(The Path is Blocked: Nanfeiyan’s Open Letter),” 15 October 2015, web.
^58 In China, lawyers do not tend to specialize in certain areas of the law. Rather, most lawyers take whatever cases they catch; human rights defenders like Chen Guangcheng are the exception, not the norm.
nature, resulted in an enterprise’s production suspension and led to grave losses.”  

The connection between economic productivity, social order (i.e. regime stability), and labor activism is recognized by the state. In an era of economic slowdown, the CCP is working to delegitimize the exercise of the labor rights that are enshrined in national law.

This brings two benefits to the CCP. First, by obstructing workers from voicing their discontent in an official channel, petitioning workers must agitate outside the system, via street protests. While there is a risk to social instability, street protests have become normalized and routinized, with proscribed boundaries; if there is instability, the CCP is well-equipped to use coercive tactics on protestors. Thus, keeping workers out of the courtroom prevents official recognition that the CCP is not protecting worker rights. Second, without the lawyers working to protect worker rights in the courtroom, local governments do not have to bear costs to economic growth. In this way, economic projects are uninhibited by the citizens’ rights. Questionable economic development that is exploitative in nature can proceed apace, while factories can shut down without paying rightful benefits to workers. Therefore, by cracking down on lawyers, the CCP simultaneously protects its image as the defender of citizen rights while ensuring that economic restructuring is unimpeded. Since the CCP is unwilling to undermine “GDP legitimacy” in an era of slowing economic growth, it has removed one of the barriers to further development. Lawyers, labor NGOs, and workers are paying the price for this political and economic bargain; many are still in jail, under house arrest, or unable to leave the country.

**Alternative Explanations**

The connection between China’s decelerating economy and crackdowns on rights advocates is not often made. Rather, there are two alternative explanations which dominate the

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59 Xinhua, "China court sentences trio for disturbing social order," 26 September 2016.
conversation, both in China and in the international human rights community. The most
commonly cited explanation is that the crackdown on lawyers and labor NGOs is part of a
grander move to narrow civil society space in China. For example, the Hubei-based Civil Rights
and Livelihood Watch group believe that the crackdown is part of a “stability maintenance plan”
that the CCP is carrying out.\(^{60}\) Labor activist Xiucai Jianghu put it even more bluntly, “They
don't want to let a single NGO survive; they want to eradicate them totally.”\(^{61}\) They cite two
pieces of evidence in addition to the crackdown on lawyers and labor NGOs: the restrictions on
foreign NGOs and on the media.

The CCP is indeed restricting the activities of these two groups. The foreign NGO law
requires foreign-affiliated or externally funded NGOs to register with local security services and
submit detailed explanations of funding.\(^{62}\) However, this move is in keeping with a recent
intensification of the campaign to limit foreign influence from China. Xi Jinping has initiated a
campaign against Western thought in academia and Party circles in an effort to build the CCP’s
domestic ideological sway. The infamous Document 9 demonstrates the anti-West, anti-foreign,
and anti-liberal stance that the central government is attempting to inculcate in China’s
bureaucracy and citizenry, primarily as a way to “strengthen leadership.”\(^{63}\) In the same vein,
restrictions on private media organizations in China—for instance, restricting access badges to
state media journalists only—are aimed at increasing the strength of the CCP’s messaging vis-à-

\(^{60}\) Wen Jian, “China’s War on Rights Lawyers is Part of Wider ‘Stability Maintenance’ Program,” \textit{Radio Free Asia},
21 September 2015, web.
\(^{61}\) See interview in Xin Lin, “China Passes Law Bring Foreign NGOs under Police Control,” \textit{Radio Free Asia}, 28
April 2016, web.
\(^{62}\) Ibid.
As such, restrictions on foreign organizations and the media are attempts by the CCP to control the discourse within China and boost the CCP’s public image. Moreover, the restrictions on information and control of the media environment have been constant goals of the CCP since the founding of the PRC. While this explanation provides context for China’s domestic climate, it explains neither the timing nor the logic for the crackdown on labor.

Furthermore, many segments of China’s civil society continue to function. Community-service organizations, business associations, GONGOs, dance groups, and other non-advocate types of civil society have not faced intensified or widespread interference. Even advocacy organizations that do not deal with workers’ rights or economic issues are still operational; the best example here is environmental protection organizations and “not-in-my-backyard” movements. These movements have disrupted China’s “business as usual” mindset in the past by forcing the government to pursue alternative avenues for development. If there was a crackdown on civil society as a whole in China, environmental groups would be among the first targets. They are vocal in the public space, use litigation as a means to push their agendas, challenge state priorities, and are recognized as a potential avenue for regime challenge. The fact that environmental groups were not selected for the crackdown underscores the CCP’s focus on law and labor specifically. The absent crackdown on environmental groups is a “hard test” for my theory of the connection between slowing growth and the crackdown on lawyers and labor NGOs.

Another alternative explanation focuses on elite politics. In this view, Xi Jinping is the catalyst for the crackdown. Some experts believe that “these formal arrests of labor activists

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64 There are also questions as to the efficacy of these media restrictions; private journalists are quite clever in avoiding the restrictions. Furthermore, the restrictions do not prevent private citizens from reporting and posting on blogs, which is a popular source of alternative media in China that rivals the state narrative.

65 Stern 2013, 143-149.
signify a significant escalation…under Xi, the authorities are showing increasing hostility toward those whose activism wasn’t considered a threat just a few years ago.” It is difficult to discern the character of Xi Jinping’s attitude towards labor activists; in China’s opaque political system, it is not possible even to know what elites in the Politburo or NPC believe, much less the president. However, it is enlightening that the crackdown did not start at the beginning of Xi’s term. If the new administration truly believed that lawyers and labor NGOs were a threat to CCP rule generally, the beginning of Xi’s administration in 2012 would have been a logical time to tamp down. Rather, the CCP continued to encourage NGO participation in rights advocacy throughout 2014. Without a precipitating event, say a nationwide lawyers’ movement or a large workers’ protest linked by labor NGOs, it is difficult to rectify the timing of the crackdown with elite perspectives, or to Xi Jinping himself. Additionally, the method of the CCP’s move against labor advocates undermines this explanation. A crackdown on lawyers could have easily been rolled into Xi’s anti-corruption campaign. All lawyers must go through a yearly licensing process, and are members of the mass organization, the All China Lawyers’ Association. As such, they are targets for “economic crimes” and trials based on—imagined or not—corruption. Instead, the central government chose a crackdown for reasons outside of corruptive behavior. Therefore, the timing and method of the crackdown points against elite or presidential preferences as an explanation for the crackdown.

These two oft-cited alternative explanations do little to explain the specifics of China’s crackdown on labor. Misguided attribution to elite politicians or generalizations based on ideological opinions about China do little to explain its domestic environment, and actually obscure nuances that can shed light on internal political dynamics. Even without “smoking gun”

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evidence—like an internal policy document explaining the reasons for the crackdown—the institutional systems of China as affected by the economic variable explains both the timing and targets of the crackdown.

**Theoretical Implications**

Throughout this paper, I have argued that the real cause of the crackdown on lawyers and labor NGOs is the slowing growth of the economy affecting China’s institutions in a predictable manner. Rights have economic costs, and the CCP is not willing to bear them while the state and private economy contract. Furthermore, the crackdown has not targeted workers or citizens themselves, but rather the conduit between rights and the enactment of rights as embodied in legal advocates. This has several theoretical implications. First, the CCP still holds “GDP legitimacy” as the most important pillar of regime stability. The upward trend of rights consciousness among the public and the increasing power of the judiciary has caused some scholars to claim that the CCP is building another pillar of state legitimacy: “law legitimacy.” In this view, a high-functioning legal system built upon the Singapore model would be equal in stature to “GDP legitimacy,” bolstering the stability of the regime even as socialist ideology deteriorates. Though China is far from having a systematized, routinized judicial system, some academics believed the regime was moving in this direction. However, my argument undermines this theory. If the CCP was truly building a “rule by law” regime, such a crackdown is nonsensical. The CCP still holds GDP growth as the most important facet of its rule, and is willing to sacrifice rights to maintain that standard.

Second, this argument demonstrates that the implementation of decentralized legal authoritarianism only works for China as economic growth is healthy. The contradiction between

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67 For an example of this line of reasoning, see Lee 2002, 220.
centrally-granted citizen rights and local accumulation is inherently costly, and those costs are only bearable for a growth-focused authoritarian regime as the economy is growing rapidly. Considering that this version of law versus accumulation is a common formula for authoritarian regimes, this analysis sheds light on the moment when institutional structure can begin to break down.

The third, and perhaps most positive implication of this argument, is that the CCP is searching for alternatives to widespread coercion. A simpler way to undermine rights consciousness and legal advocacy is to prevent citizens from using the courts by force. This could mean shutting down courts in contentious areas, refusing to accept legal cases brought by workers, forcing justices to rule against workers, changing national workers’ rights legislation, or putting petitioning workers themselves into prison. However, the CCP has chosen to avoid obvious coercive activity, instead making an incisive strike against a relatively small group of people. This shows that the Xi Jinping, whom some analysts have called the “most authoritarian since Mao Zedong himself,” is not as dictatorial or violent as his infamous predecessor. Even when its rights legitimacy is threatened, the current CCP is reticent to publicly undermine the law or infringe on rights consciousness.

Finally, we can expect this trend to continue as long as the economy is slowing. Without major alterations to cadre incentives in the nomenklatura or the construction of a strong alternative base for CCP legitimacy, the structural causes of the crackdown will not abate. If the economy improves markedly after the painful phase of economic restructuring passes, we can expect to see the space for legal advocacy to reopen, and for the CCP to return to a focus on “rule by law.”
Conclusion

In an era of slowing GDP growth, the CCP cannot afford to keep the promises of social welfare embedded in the law. As part of the legalization process, the central government encouraged citizens to learn about their rights within the national law, and use that knowledge to hold local governments and businesses accountable to central standards. Now, the awareness of legal protections is backfiring; local governments continue focus on accumulation at the expense of citizen rights, but now the center cannot afford to reign in local governments as economic restructuring proceeds.

The natural reaction of an authoritarian government would be a crackdown on “the squeaky wheel”: a roundup of petitioners and protestors, quieting the streets through force. But the mass of disenchanted Chinese is huge; the state may not have the capacity or will to arrest and imprison the millions who take to the streets or blockade government offices. Rather, the CCP is taking a different tack.

Citizen rights lawyers and labor NGOs that are defending clients based on national law are exposing the CCP’s reneging of its own promises. A crackdown on lawyers and NGOs is a way to avoid conflict between falling GDP growth and the movement towards legalization. Thus, the CCP is arresting, disbarring, and breaking up the individuals and groups who give legitimate voice to Chinese citizens, without whom the citizens do not have the wherewithal to fight the infringement of their national rights.

Why labor NGOs and civil rights lawyers in particular? These two groups are closest to citizens with the most widespread and potentially radical claims: workers. The members of the old proletariat have, in many ways, lost the most in the new economy. Workers are no longer protected by the danwei system, rather, it is the law and central policy that is supposed to protect
their rights in the new state-society relationship. However, as the old system falls away and is further reformed, even in large national industries, laid-off Chinese workers are finding themselves without a social safety net.

By removing the conduit for aggrieved citizens to voice their rights claims, in turn, this protects CCP “rights” legitimacy at a time when “GDP legitimacy” is threatened. In this way, the CCP can rely on policies with less negative impact on the economy, but this constitutes a broken promise to the public. The crackdown on lawyers and labor NGOs proves that at the end of the day, GDP growth is more important than law, despite the campaign to create an image of the CCP as a benevolent entity that rules the country by law.
Bibliography


