

Solidarity under a Song: What Strikes in China Tell Us

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Early one Monday morning in 2010, Tan Guocheng came to his shift at Honda's Nanhai factory in Guangdong Province. Tan was a twenty-four-year-old migrant worker from Hunan, a neighboring province, and the factory manufactured automobile parts. But that morning Tan did not turn on the machine. Instead he pushed a red emergency button nearby. At once a "humming" noise filled the air, and the entire production line stopped. As planned, Tan and a group of workers walked out. Others stood there, hesitating, watching, but soon the ranks of the protesters grew as they assembled in the factory's basketball court. Thus began the great Nanhai strike of 2010, the beginning of a long increase in labor strikes that has continued through today.

In the years prior, the *political* role of the strike had become less visible. In the West, strikes long ago took on a highly ritualized form, becoming a part of the game between labor and capital that could be easily planned for on both sides. (The decline of manufacturing and changing nature of work also affected strikes in the West.) The Nanhai strike, however, carried a much more radical intention. While the common formula used to explain strikes cherishes the “unseen hand” of the market and its concomitant rights discourse, Nanhai essentially represented a conscious effort of the strikers to repoliticize their walkout. They sought to overcome the barriers posed by the “rule of law” and return what the law defines as contractual employment disputes to their original status: the breaking, repair, and reorganization of the Party-masses relationship. The solidarity thus regained would not be a lawful right, but an avatar of justified power, authority, and people’s sovereignty, all captured by a single Chinese character, “quan” (权). It is this phenomenon which has begun to appear not only in China but also, for example, in the *gilets jaunes* movement in France.

In the recent past in China, a “mass incident” (*qunti shijian*) like Nanhai ordinarily ended quickly, “mass incident” being a euphemism for any forms of unapproved public assembly, demonstration, strike, or rioting. This time, however, the workers did not submit to the usual measures of control by the management and the company’s trade union: cash offers and threats of layoff, beatings and calling in the police. Nothing worked. Even after Honda summarily fired Tan and another leader, and asked all employees to sign a pledge not to join the walkout in exchange for a ¥55 (€6.90) monthly bonus, the strike continued. The protesters rallied at the factory gate, all in white uniform and surgical masks to avoid being identified by surveillance cameras and targeted for reprisal. In unison they sang the national anthem:

“Arise, ye who refuse to be slaves! With our very blood and flesh, let’s build a new Great Wall.” The anthem, entitled “March of the Volunteers,” is a historical battle song born in the war against Japanese aggression, which later evolved into World War II.

The strikers also went on the web for support and formed QQ communities (Chinese chat rooms), where they addressed each other as “comrades” (*tong zhi*). Thus they restored a moldy bureaucratic appellation to its radical original meaning—“tong zhi,” fellows “of one will” (a usage also shared by China’s gay subculture, not coincidentally).

So the strikers persisted, for nineteen days. Their demands were firm and clear: (1) reorganizing the trade union, (2) a pay raise of ¥800 (€100) per month, and (3) no reprisal. Perhaps due to their moral courage and discipline as well as their grievances, which drew great sympathy among the public—or just by accident—the *People’s Daily* published a detailed report on the strike. According to observers, the coverage was unprecedented for the chief organ of the Chinese Communist Party, for it carefully maintained neutrality and neither pointed a finger at workers nor sided with management. Reform-minded scholars and news commentators felt encouraged and called for a “rule of law” strategy in lieu of harsh suppression for the sake of “keeping stability” (*wei wen*). For suppression, in their view, is likely to aggravate the conflict and “drive the Party’s mainstay, the masses of workers, to become opponents to the Party.”

Eventually, with the battle song reverberating on the factory premises, the workers “spontaneously” elected thirty delegates, who drafted a six-point bargaining plan. On June 4, a day after the delegates web-published an

“Open Letter to Workers and All Walks of the Society,” the management agreed to sit down. Rounds of tough negotiation followed. With the help of a mediator, the CEO of a state car maker (in his capacity as a member of the National People’s Congress), the two sides reached an agreement on a monthly pay raise of ¥500 (€62.5). The agreement took effect by a vote, and the protesters returned to work on June 5.

What happened next was a landmark achievement in the labor history of the People’s Republic of China: the company’s trade union was reorganized pursuant to the strikers’ demands. The pressure is said to have come from the provincial Party officials upset by the workers’ angry denunciation of the union. In theory, the Party consists of what is called the “pioneers of the proletarian class,” while the union functions as a self-governing organization independently representing the workers’ interests (articles 4 and 6, the Trade Union Law 2001). Yet the Nanhai workers not only had no trust in the union, but loathed it. Indeed, throughout their negotiation with the management, the union was totally ignored. Such open hostility was reportedly a great embarrassment to the provincial trade union which supervised local unions. Consequently, a team of union cadres was sent in to implement a six-month program of “norm building” and to offer “guidance.”

The old rule of appointment was dropped. The new officers of the Nanhai union were not picked among managers or “fallen from the sky,” as people say of those designated by the government. This time they were elected by workers from among themselves—every one of them, team leaders, workshop representatives, up to the chairman and his deputies. The new democratic union then led the bargaining on the year-end bonus and 2011

salary scheme, with the backing of the provincial trade union as well as competent legal counsel. Again the negotiation was intense and nearly collapsed, but both sides made eleventh-hour concessions and agreed on a 27 percent pay raise.

The new union's success was hailed by labor experts as an exemplary resolution of labor disputes, and media pundits also predicted that the case might mark a new chapter in the official union's democratization. For the reorganization of the Nanhai union took place at a critical moment, as 2010 saw a sharp increase in labor unrest nationwide, especially in privately owned and foreign-invested enterprises. After this new development, it was hoped that strikes would become rarer and even unnecessary, given what can be gained through collective bargaining by democratically elected unions.

To consider the Nanhai case in the larger social, economic, and historical context, however, several questions are in order: First, what are the main factors that contributed to the recent eruption of labor unrest, and who are the strikers? Secondly, do workers have a right to strike under Chinese law, on the books or in reality? Thirdly, whatever legal status the workers' collective action and achievements may be, what can we expect for the future of China's labor movement? Let us consider these questions one by one.

Who Are the Strikers?

That labor unrest is on the rise is news no more. Its ubiquity has been blamed on a variety of social trends and economic policies: the gradual aging of the population and labor shortage; industrial upgrading and outsourcing

of blue-collar jobs; new tools of mobilization in the internet age, like microblogging and QQ chatting; as well as the government's ambitious urbanization plan, which will relocate millions more rural laborers to cities, to pursue the dream of a "well-to-do" (*xiao kang*) life. "Empty the cage and change birds," as an official slogan put it.

So, who are they, the strikers? In Western media they are called "migrant workers." The stereotypical description is of a young man or woman from a remote, poverty-stricken village in one of the inland provinces. He or she comes, with a group of villagers or through the help of a relative or friend, to a coastal city and finds a job and earns a meager living. Often the treadmill employment drives workers to injury and illness. In extreme circumstances, their desperate protestation takes on a very traditional form of appealing to Heaven as the ultimate Judge—suicides. For instance, workers jumped to their death from buildings at some facilities of Foxconn, a computer maker and consumer-electronics giant, a Fortune Global 500 company.

But to call such a worker a migrant is, strictly speaking, a misnomer. The Chinese term is more accurate, "peasant worker" (*nongmin gong*), as his or her official status in terms of household registration (*hukou*) is a peasant, not a migrant to a city. Free migration is not yet a citizen's right due to the "hukou" system. Without an urban "hukou," the peasant and his or her children have only limited access to education, employment, medical care, and social security benefits. Today the majority of peasant workers are of the second generation. These "new workers" are better educated than their parents, having been exposed to the lures of urban life and ways of commercial society at an early age. While the first generation rarely took

collective action, for various reasons, the second generation is much more prone to staging a “mass incident”—hence more frequently becomes a headache for both the management and government.

In the Nanhai strike, the “instigator” and one of the organizers was the twenty-four-year-old Tan, as mentioned above. Before his Nanhai job, he toiled with little pay at another Honda facility in nearby Guangzhou as a temporary hand. At Nanhai, he was paid ¥1,200 (€150) per month, with which he could hardly make ends meet. And he found out on the internet that, despite the global financial crisis, Honda’s operation in China was doing quite well, generating huge profits and forming a significant portion of the Japanese giant’s total revenue. He decided to quit his job after the lunar new year. But he also talked with fellow workers about the possibility of a strike, and many said they would go along with him. So Tan handed in his resignation in April, giving thirty days advance notice, as per company policy. The rest is history.

Later, in an interview with a Hong Kong weekly, Tan emphasized that throughout the “mass incident” the strikers adhered to the principle of nonviolence. The idea was inspired by Mahatma Gandhi, he said—a decade ago, who would have expected such foreign ideas and “educated” language on the lips of a peasant worker? As soon as the strike began, he circulated a note among workers, asking them not to damage company property, so as not to give the other side an excuse to call in the police. When the management and official union turned up pressure and threatened punishment, the protesters got the real-time photos, videos, and footage on the web, which immediately spread the news of the walkout throughout the country. Chanting the “March of the Volunteers,” the strikers exerted their

unity in civil disobedience: “Arise, arise, arise! Millions of masses of one mind, Brave the enemy’s gunfire, March on! Brave the enemy’s gunfire, March on, march on, march on, on!”

Noticeably, however, Tan and his fellow workers did not pursue any legal options, nor would they pay lip service to the “rule of law,” as did the authorities. In other words, the strike was a success despite its lack of legal protection. How did this come to be?

A Right in Legal Limbo

Whenever there is labor unrest and strikers are fired or subject to threats and beatings, or face arrest and prosecution, a legal question is invariably asked: do workers in China have a right to strike? For human rights lawyers and constitutional scholars, as well as labor activists, this question has been like a “thorn in the flesh” for three decades, a real torment from Satan’s messenger, so to speak (2 Cor. 12:7). For the agony was caused by none other than the PRC Constitution of 1982.

Prior to 1982, the freedom to strike was accepted by the Party and enshrined in both the Constitutions of 1975 (article 28) and 1978 (article 45). There this freedom is listed in the provision of “citizen’s basic rights” along with the rights of free speech, correspondence, press, assembly, association, demonstration, as well as the “four great freedoms” endorsed by Chairman Mao in 1957—namely the freedom to air one’s views, criticize authorities, take part in debates, and put up big-character posters. In 1982, the NPC adopted a new constitution, following the Party Central Committee’s resolution on the Cultural Revolution (May 1966–October 1976). The

lawmakers duly deleted the term “strike” from the basic rights provision and dropped the “four great freedoms.” While the latter were repudiated as relics of the Mao era, the freedom to strike was canceled as “a product of the ultra-left trend of thought, incompatible with the interests of socialist development or with China’s concrete circumstances.” “Since enterprises in our country all belong to the people,” the NPC legislative notes reasoned, “a strike that halts production is a damage to the interests of the people in its entirety, including the working class.”

At the time of this legislative statement, it should be noted, China’s economic reform was at an initial stage, and the majority of enterprises were either state-owned or owned by collective entities (such as a People’s Commune or a neighborhood committee). The assumption was that urban workers as a class were now the “masters of the state,” who shared the same basic interests and long-term objectives with their “work units” (institutions and enterprises). Therefore any disputes that arose between the work unit and individual workers should be resolved by proper means rather than a strike, such as “criticism and self-criticism” and reconciliation, so as to minimize the interruption and possible damage to the socialist cause.

That of course is specious reasoning. For one thing, the economic reform (i.e., privatization) had already begun, and soon most state-owned and collectively owned enterprises would be transformed into private companies or go “bankrupt” and be sold—a process that would drive a large chunk of the nominal “master class” into unemployment and early retirement. The vacated jobs as well as those newly created were to be filled mainly by peasant workers. Understandably the peasants were “cheaper” and easier to “manage,” for, as discussed above, without “hukou,” they are in a much

weaker position than regular state employees to bargain for better pay, labor protection, or humane treatment.

Nonetheless, until recently, there has been strong opposition to statutory recognition of the freedom to strike, from the political establishment as well as industries, who viewed workers' solidarity as a threat to private property rights, social order, and economic development. Today, some right-wing reformists and conservative media still refuse to budge, but scholars and labor activists argue that the constitutional cancellation does not mean the workers' walkout is unlawful, though the legal system has yet to accept the "three rights of labor"—the rights to organize independent trade unions, to strike, and to bargain collectively. The preferred approach among moderate advocates is therefore one of "de-politicization," meaning to replace the current high-handed policy of "keeping stability" with a form of "rule of law."

To this end a number of arguments have been proposed. One is based on the *maxim nulla poena sine lege* (no punishment without a law). It goes like this: Although striking is no longer a constitutional freedom, it has never been outlawed, either. Therefore the law has no reason to interfere if a walkout does not infringe upon the lawful rights of any enterprise or citizen or breach social order. That, however, is rarely the case.

On a positive note, one may point out that since China has acceded to the International Convention on Economic, Social and Cultural Rights without any reservation, the Chinese government has an obligation under that convention to respect the workers' right to strike (article 8). Plus, a stronger argument adds that certain national statutes can be interpreted to lend

further support. The Trade Union Law of 2001, for example, requires that in the event of “a halt of work or slowdown,” both the union and management “should” endeavor to “conciliate” and “resolve the incident” (article 27). Is the phrase “a halt of work” not a description of a strike? If yes, it is suggested, the “should” provision appears to assume an obligation on the union and management, hence a right for the workers, with regard to the strike in question.

Unfortunately such a “liberal” interpretation is a bit overstretched. There can be many reasons to impose an obligation, and the law requires only that the union and management “conciliate” and “resolve the incident,” and mentions nothing like the workers’ right, as if they were outsiders to the dispute. From such language one can hardly infer a vague statutory restoration of the freedom to strike. Nor is the International Convention really of much help, as it cannot be implemented in China without an enabling statute in the municipal law, and the Trade Union Law is clearly not such a statute.

Given that the legislation has omitted the freedom to strike, can the People’s Court be of help with a little judicial activism? That too is unlikely, at least for now. The conundrum is an institutional one, and familiar to China scholars. Indeed even an occasional observer cannot fail to notice, including one of the leading jurists known and studied in China: Judge Richard Posner. Recently at a University of Chicago summer program on “law and economics” specially designed for young Chinese scholars, Judge Posner delivered a speech. The pioneer of “law and economics” called himself an “outsider,” but remarked that China is “a nondemocratic country with a tenuous commitment to the rule of law,” and that “in such a political

culture . . . it would be a mistake for the judiciary to be pragmatic, or at least to be very pragmatic—that it would be better for it to be abstract and formal, and actually remote from practical and pragmatic.” For by removing themselves from the practical, the judges (in the manner of a Blackstonian judge) could say, “Look, all we judges do, we translate immemorial principles of justice into decisions. We’re not politicians; we don’t exercise discretion. We don’t consider consequences; so leave us alone.”

Now the use of legal dogmatism by the Chinese “Blackstonian judge” playing the game of “the oracles of the law” after the manner of a Delphic priestess, out of self-interest, as recommended—is this approach rather too “practical”? But Judge Posner is right, in a sense. The People’s Court is a relatively weak department in the Party-state apparatus. It has to be very flexible if it is to maintain the little authority allowed to it, as well as to hide the widespread corruption. Not surprisingly, coping with all sorts of interference and bribery, the judges tend to take refuge in dogmatism and therefore must deny the workers their right to strike. Consequently strikes and collective actions in general continue to dwell in a legal limbo, as a constitutionally revoked freedom.

Overcoming the Law by a Song

So the strikers sang the “March of the Volunteers,” at Nanhai and everywhere. By singing the historical battle song, the workers effectively said “No” to both the legality of their strike and the legitimacy of any act of suppression or hostility whether by the management and official union or by government authorities. In other words, they rejected the hypocrisy of “rule of law” and chose to re-politicize the strike, making it a resounding political

expression rather than a mere labor dispute over some economic and personal rights.

The anthem was composed by Nie Er, a musical genius, patriot, and young Communist who died in 1935, aged twenty-three. The song has always been a rallying call for courage and solidarity in national crisis. Much like holding up portraits of Chairman Mao by demonstrators in post-Mao China, singing the anthem is also a symbol of protest. It is an effort to overcome the barrier of unjust laws and corrupt bureaucracy in order to speak to the Party directly, without any intermediary such as the prescribed arbitration for labor disputes, or even the People's Court.

The symbol is powerful because it holds the Party accountable for the workers' grievance, instead of the enterprise or its managers or anyone else legally relevant to the case. It recalls, naturally, the ancient tradition that the emperor as Son of Heaven has a duty to listen to his subjects when a great wrong harms them and his magistrates fail to safeguard justice. But the real impact, hence its juridical significance, of this re-politicization on the nation's collective consciousness is that it revivifies a modern tradition, namely the twentieth-century Chinese revolution. For the past three decades, China is said to have bid farewell to the revolution. In many aspects of social and economic life, as well as mainstream propaganda, this is largely true. Today the country is embracing a market economy with private ownership of the means of production and unhampered labor exploitation, fully engaged in international trade and competition, like a shameless, upstart venture capitalist.

Yet history is not entirely forgotten. As the workers utter the verses of the anthem or hold up portraits of Mao, the nation's memory returns. That is why the strikers denounced the unionist thugs who clashed with them as "yellow" saboteurs. Not that the unionists wore yellow caps and took orders from managers, but because people have not forgotten what Lenin once said of the socialist trade union. The union, he insisted, should become a school, where workers learn to manage their factories, supervise economic activities, participate in the governance of the country, and guard against bureaucratic corruption. In a word, as the Bolshevik leader famously said, the union is "a school of Communism."

In this connection, the anthem is bound to fill people's ears with the all-too-familiar words and melody of that hymn of proletarian revolution, from the Paris Commune of 1871, "The Internationale." For the verses of the anthem echoed those of Eugène Pottier, in the official Chinese version:

Arise, ye slaves in hunger and cold,
Arise, the poor of the world
Oh slaves, arise, arise!
Do not say we have nothing,
We shall be masters under Heaven!

To achieve solidarity under the anthem, one would have to recall the ideal of the Paris Commune, that workers must act as "masters under Heaven." In jurisprudential terms, it can be said that the "freedom" the striking "masters" exercise is an avatar of solidarity embodying a kind of sovereign power (*quan*), rather than a "citizen's basic right" canceled by the Constitution 1982, now preserved in some international convention and labor law

textbooks. In fact, the Nanhai strikers stated this very ideal in their *Open Letter*: “Our struggle for upholding ‘quan’ (power/authority/sovereignty/rights) is not for the benefit of the 1,800 workers in this factory only, but we are concerned with the ‘quan’ that benefits workers across our country, and we hope to set a good example of ‘quan’ being upheld by workers themselves.”

The Chinese character “quan” is often rendered “right” in legal texts. But the monosyllabic root originally means a balance or steelyard, hence an act of weighing or judgment—hence power, authority, a situation of advantage, as well as an individual person’s rights or a master’s sovereignty. Here in the *Open Letter*, since “quan” refers to that of the working class and not of individual workers, the concept must not be limited to “rights” (*quan li*), with its textbook specifications, as interpreted according to statutory language and legal dogmatism. Rather, “quan” should be understood in the changing context of the Party-masses relationship, from the character’s original and derivative semantic signification to the profound politico-legal ambience in the heart of hearts of peasant workers when they recall the Chinese revolution.

And that was their own revolution. It all started over ninety years ago, and one particular event is a reminder of their struggle today. On May 1, the International Labor Day of 1921, a young man named Mao Zedong spoke to the first labor unions of Hunan Province, who gathered with slogans written on red banners—“No labor, no food,” “Workers are sacred,” “Workers of the world, unite!” He urged the workers to strive for what he called the “three ‘quan’ of labor”—“quan” concerning their subsistence, labor, and harvest [of the fruits] of labor. Clearly, these were not recognized

legal rights then, nor are they now. As Mao explained, the three “quan” mean that, first, not only workingmen and women are entitled to a decent living, but their families including children under eighteen and parents beyond sixty years of age. Everyone who is yet to enter the labor market or who has sold up labor should have the same entitlement, in accordance with the “precedent” that heaven grants the same rain and dew to herbs and trees, regardless of old or young, weak or strong. Secondly, for workers aged between eighteen and sixty, all are entitled to work. If for any reason the market does not have enough job openings, and some able-bodied workers have to stay “off duty,” then it is the society’s responsibility to feed them, since their unemployment is not a crime nor a sin. Thirdly, pursuant to the “No labor, no food” principle, all the fruits of labor shall belong to the laborer, though realistically, that is not the immediate goal of the labor union. This last “quan”—or weighing a judgment on everything for proper deployment of power, as the ancient philosopher Xunzi (ca. 313–238 BC) taught, cannot be fully realized unless the capitalist system is overthrown, both its mode of production and employment relationships. That, Mao informed the workers, was what people in Russia had already done, in solidarity.

When all these historical teachings are recollected in earnest, what should the strikers singing the “March of the Volunteers” mean to the supreme political “quan” of the land, the Party? Can the Party treat the “mass incident” as a “labor-capital dispute” and ask the disputants, the workers and management, to seek arbitration or go to the court, as experts recommend? Or simply ignore them? The answer is negative. For the question has to do with the very legitimacy of, or people’s faith in, the Party’s “unified leadership,” which requires that “quan” be deployed on the

principle of “serving the people”—as displayed at the front gate of every Party unit, in the Chairman’s charismatic handwriting—and nothing else. So long as that principle remains operational in maintaining the stability of the Party-masses relationship, the Party will find no excuse to turn a deaf ear to the voice of the masses. For the sake of its own organizational survival, the Party has to admit that the peasant workers constitute the “masters under Heaven,” even when, or because, they are going on strike.

Strikes go to the heart of the political foundations of modern China. In the West, too, they can reveal whether the terms of the social contract among workers and capitalists are really being observed—and begin a process to revise them. All over the world, the “management” of workers’ dissatisfaction is being exposed as inadequate to the fundamental political questions lurking below. Our questions, then, are these: how long will the slogan “Serving the people” hang outside every Party unit, given the rampant bureaucratic capitalism in China today? And when that slogan falls off the gates, yet the strikes continue, will the three Maoist “quan” take its place on red banners again?

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