

# 1. INTRODUCTION

Once more, with all respect, I urge the leaders of all state agencies in the province to promptly intervene to save our lives. We are genuine employees who have no rights, lack equality, and experience a lot of coercion by the company.

This desperate plea comes from Mrs Nguyễn who has worked for six years in a garment company in Đồng Nai province. She lodged a complaint and petition against the company management after perceived legal violations and unfair treatment. Mrs Nguyễn exhausted her legal arguments accusing the management of illegal wage policies and a lack of transparency in employees' bonus payments. This extract from one of Nguyễn's complaint letters is similar to the kind of rightful claims brought against the abusive power of political and economic elites in authoritarian regimes (O'Brien and Li 2006, pp.2–3). In making these claims, resisters exhibit a consciousness of their legal rights as well as knowledge of appropriate state law and other normative reasoning to mobilise popular support and demand justice. Similar to many other factory workers in Vietnam, Nguyễn was abandoned by the trade union that purported to serve in the workers' interests. For the past few decades after the country's opening its door to private and foreign investment, Vietnamese workers' struggles to have their voices heard have been both enabled and stifled by the legal and political systems that are supposed to protect their rights. Workers' accounts of resistance, both verbally and in writing, are underpinned by their consciousness of the socialist state's legal and political structures.

This book seeks to capture and comprehend factory workers' resistance in Vietnam through an examination of their values and ideals of rights and justice. In particular, it investigates the extent to which values, language and practices derived from the Labour Code, which is the key labour legislation in Vietnam, contribute to shaping workers' views of workplace relations and providing justifications for their resistance. I understand resistance as acts that question or challenge power arrangements, authority, or practices of subjection, and focus on two forms of workers' resistance: factory strikes and complaint writing and petitioning. In Vietnam, strikes, which are largely spontaneous and without union organisation, have been the most popular form of workers' resistance. Strike demands have varied, but they all represent challenges to managers' conduct and policies on the shop floor and, less frequently, state laws and policies (Trần 2013, Tran 2007). Other forms of resistance, such as petitioning and complaint writing, while not as vocal and explicitly confrontational as strikes, also deserve attention as they represent valuable testimonies of workers' experiences on the shop floor in relation to labour

law and their desires for justice. As will be shown in subsequent chapters of the book, these actions give expression to workers' grievances and demands that have either been silenced or suppressed, and question or challenge existing practices by company and factory management and, at times, by state authorities.

The 1986 reform in Vietnam, known as *đổi mới* (renovation), gave rise to the development of private domestic and foreign investment and marked a shift in labour relationships from a socialist to a market-based perspective. The Vietnamese Labour Code, passed in 1994 and most recently amended in 2012, laid the groundwork for the state's regulation of labour based on the rights and interests of employing parties within their contractual relationships. In practice, the evasions and violations of labour rights enshrined in the law have led to a rise in factory strikes that bypass the legal procedure for labour dispute resolution. More than 70 percent of strikes from 1995 to 2010 occurred in foreign enterprises dominated by Taiwanese, Korean, Hong Kong and Japanese investors (Trần 2013, p.200). Thus, despite making up less than four percent of all registered businesses in Vietnam,<sup>1</sup> foreign enterprises are central to the prevalence of labour unrest in the country. The government, meanwhile, has continued to promote the importance of attracting foreign investment; a government decree in 2009 includes strike prevention and labour dispute resolution as necessary measures to facilitate foreign-funded production activities.<sup>2</sup> While strikes in state-owned enterprises are undoubtedly under-reported, the cultural alienation between foreign managers/supervisors and Vietnamese workers is an important factor in arousing and escalating shop floor tensions (Trần 2013, p.197).

The Vietnam General Confederation of Labour (VGCL) remains the only recognized trade union in Vietnam. It claims to represent the entire Vietnamese working class and serves under the agenda of the Communist Party of Vietnam (CPV) in the interest of maintaining regime stability. Under the pressure for reform following the waves of factory strikes, the VGCL has exerted a greater voice in law and policy dialogues for the benefit of employees (Knutsen and Hansson 2010; Do and van den Broek 2013). There are also increasing efforts to enhance the bargaining capacity of company unions affiliated with the VGCL on the shop floors. However, these positions are often filled by management personnel, leaving the workers voiceless. These efforts have neither increased workers' bargaining power nor addressed the persistent distrust between them and the organization that claims to act in their interests.

The subject matter of this book relates and contributes to the broader literature on labour resistance in post-socialist countries of Vietnam and China. While not presenting a comparative study, it draws from works conducted in China which provide useful perspectives and insights into the case studies in the Vietnamese context. Both China and Vietnam have experienced transition from central planning to a market-based economic system, starting in late 1980s and 1990s, under the leadership of the ruling communist party and its socialist legacies. These countries have also reformed their labour law regime following market principles while recognising only one legitimate trade union, the All-China Federation of Trade Unions and the VGCL, respectively.<sup>3</sup> The VGCL to date has had more institutional power than their China counterpart, at least in their capacity to participate in developing key labour policies at the national level (Quan 2015).

The brunt of economic transition in post-socialist Asia falls foremost upon the state workers, who became redundant following the restructuring or dismantling of state-owned enterprises. In the socialist era, employment was based on workers' loyalty and obedience to their managers and the state in exchange for a modest income and guaranteed social welfare, rather than on legality and formal labour contracts (Hurst and O'Brien 2002, p.357; Walder 1986). As economic reform put to rest the socialist state's promises of welfare and life-long employment, these workers launched protests and lodged their petitions to call upon the state and management to uphold their moral obligations (Lee 2007; Chen 2000; Hurst and O'Brien 2002; Trần 2013). Viewed from a moral economy perspective,<sup>4</sup> the redundant workers' sense of grief turned into vocal protests in particular when their minimum living needs were no longer secured, and when they believed that managerial corruption had added to this situation (Chen 2000, pp.45–48). Those state workers who demand their pensions also held the state and managers accountable for their now impoverished livelihoods (Hurst and O'Brien 2002). They acutely felt that a breach of reciprocal duties and a denial of the socialist contract had occurred when their pension was not paid in part or in full after all their years of service to the state enterprises.

The next wave of labour unrest was led by a new generation of migrant workers, who left their rural hometown to look for jobs and better incomes in growing urban and industrial areas. In both China and Vietnam, economic reform and integration into the global economy have produced a surge of growth in private domestic and foreign businesses, which are typically labour-intensive and export-oriented, and a high demand for manual, unskilled labour. As businesses have sought to maximise their profits and drive down labour costs, the new, mostly

migrant working class, has been subject to exploitation and varying forms of managerial control on and off the shop floor (Chan 2001; Chan 2008; Pun 2005, 2016; Friedman and Lee 2010; Friedman 2014; Trần 2013; Pun and Smith 2007). These workers, at the same time, lack the institutional capacity to organise and collectively bargain with the state and capital. Their experience of a perpetual cycle of exploitation, powerlessness and desperation has led these workers to take illegal spontaneous action, mostly in the form of strikes and protests, to demand decent wages and working conditions. Since the Labour Code was introduced in Vietnam in 1994, factory strikes have continued to break out in large numbers each year: they climbed to a peak of 993 in 2011, then dropped to 601 in 2012 and 293 in 2014 (VGCL 2015). In China, while official statistics for strikes are unavailable, different sources have suggested that hundreds of thousand labour disputes took place across the country from 1993 to 2010 (Elfstrom and Kuruville 2014, pp.454–455). The prevalence of workers' collective action against the law is a significant challenge to the legal regime that endorses a wide range of employees' rights in accordance with international labour conventions.

From a Marxist political economy perspective, state law is an aspect of the superstructure that controls and immiserates the workforce in the interests of the ruling and powerful classes. Law functions as a political and ideological tool to safeguard the capitalist mode of production and sustain its machine of labour exploitation (Steinberg 2010; Cotterrell 2006). In post-socialist China and Vietnam, the growing political alliance between the state and capital (especially foreign capital) in export processing zones and industrial regions in the south has significantly constrained workers' institutional power (Pun 2005, 2016; Nghiem 2006; Trần 2013). Consequently, the promulgation of labour laws is rendered unfavourable to the workers' interests and contributes little to protecting or advancing labour rights (Chan and Siu 2012; Chan 2008; Trần 2013). In particular, while employees now in principle have extensive individual rights in accordance with international conventions, the lack of collective rights, such as the right to strike and to form independent unions, serves to entrench workers' disadvantage vis-à-vis the state and capital. The phenomenon of factory workers' disruptive street actions in Vietnam and China during the past few decades is a reaction against the capitalist power structure,<sup>5</sup> of which the law is a part.

Still, disadvantaged workers have shown that state law is neither irrelevant nor detrimental to their aspirations for justice. Workers have become more familiar with the legal language and know how to navigate the legal avenues thanks to the state's consolidation of its legal regime (Lee 2007), its legal education campaign (Gallagher 2006, Hui and Chan 2012), and a variety

of forms of legal support run by non-governmental migrant organisations (Becker 2014). To be clear, the Chinese state is more pro-active than Vietnam in disseminating legal knowledge and informing its population of the benefit of using legal avenues, despite both states displaying a similar rhetorical turn towards formal legality in regulating the public sphere. In China, workers' actions such as lodging complaints and disputes via administrative bodies, filing labour lawsuits, and invoking legal labour rights, fall within the broader phenomenon of citizens' 'rightful resistance' (O'Brien and Li 2006; Lee and Hsing 2010). Rightful resistance is defined as '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, [...] entails the innovative use of laws, policies, and other officially promoted values to defy disloyal political and economic elites' (O'Brien and Li 2006, pp.2–3). Workers' engagement with law in turn inspires a growing academic interest in 'rights consciousness' (Wong 2011, Lorentzen and Scoggins 2015), which refers to the way a person understands and perceives their *legal* rights. Of course, one's consciousness of law is not static nor does it develop in a linear fashion; it is subject to fluctuation and change as they actually navigate the legal system to demand redress (Gallagher 2006).

From the rightful resistance perspective, law is not just a set of uncontested rules enforced by the state and its legislative bodies. Rather, it can be appropriated by societal actors for purposes that might work against state interests. Analyses informed by this perspective acknowledge the legal endorsement of rights within new laws and policies as the key factor that enables rightful claims and individuals' demands for rights protection. These actions indicate individuals' consciousness of their citizen rights, and, at the very least, show that legal institutions have had a certain role to play within contemporary societies that previously were bound by customary moral norms and respect for social hierarchy rather than by codified written laws.<sup>6</sup> The literature therefore lays the ground for further interest in the contribution of state law towards advancing social justice.

While previous studies provide useful insights into the causes and nature of workers' resistance in post-socialist contexts, we need a more holistic approach to understand what state law means to Vietnamese workers' notions of justice and injustice. The main problem with previous studies lies in the way they view and conceptualise state law, and more importantly, how it relates to other norms and values in shaping the relationship between the state, workers and management. In particular, while the political economy scholarship takes a top down approach and examines law predominantly as part of the state-capitalist structure, studies that take a

moral economy perspective generally take little interest in state law. Although they offer valid explanations as to how and why the majority of workers in China and Vietnam have bypassed or turned away from legal rules and procedures, they fail to acknowledge, or properly address, practices, values and meanings derived from the law that underpin workers' expectations, language and acts of resistance. The rightful resistance literature has brought the law back in, yet it tends to pay attention to instances when citizens deploy the legal system and legal discourse in an explicit manner. This focus also does not produce an adequate assessment of law as it overlooks instances when law contributes to resistance and citizens' consciousness in a subtle and tacit manner.

This book seeks to overcome the analytical shortcomings in previous studies by taking a socio-legal approach that explores the relevance and meaning of law through its interaction with non-legal sets of norms and practices. It takes interest in the different values underpinning workers' framings of workplace problems, demands and ideals of justice, and the relationship between these values and their experiences and understandings of labour law. In doing so it is able to reflect upon different threads of understandings and perspectives about law, morality and justice as discussed in previous studies, and evaluate the possibilities and constraints of law in addressing workplace injustice.

This book also contributes to the literature on law and society in post-socialist regimes in Asia, which to date tends to treat law and other sets of moral norms and precepts as oppositional, conflicting, or separate from each other (see, for example, Phạm 2005; Gillespie and Nicholson 2005; Koh 2007; Yang and van der Wal 2014; He and Feng 2016). In these works, state laws are portrayed as new rules, ideas and thinking that are not compatible or clash with pre-existing moral norms and beliefs. Through a socio-legal account of labour law in Vietnam, this book illustrates that law penetrates more deeply into social life than what conventional scholarship has shown. As law interacts with other normative orders in shaping the way workers justify and deal with their grievances, the relationship between law and morality becomes fluid and complex. This book thus advocates for a deeper evaluation of law in its contribution to social change and reform in post-socialist contexts.

### **A socio-legal account of labour resistance in Vietnam**

Building upon the tradition of socio-legal scholarship<sup>7</sup> that situates law within other cultural and normative understandings, this socio-legal account evaluates to what extent law underpins social interactions and influences individuals' behaviour and consciousness, which ranges from

compliance with power and authority to resistance. Different socio-legal scholars have defined law in various ways and examined it through different contexts. Sally Merry (1990, p.5) defines law as consisting of ‘a complex repertoire of meanings and categories understood differently by people depending on their experience with and knowledge of the law,’ and explores how the American working class bring their social problems to the courts and/or later confront the court’s authority. Michael McCann (1994) studies law through legal conventions, discourses and practices, examining how rules and communication surrounding state laws inform individuals’ understandings of their rights, and how outcomes of litigation reinforce or alter those understandings. Patricia Ewick and Susan Silbey (1992, 1998) treat law as a cultural schema and resource that shapes individual behaviour and social relations. Their study focuses on how law matters in ‘taken-for-granted acts and agreements’ (1992, p.732) outside formal institutional settings and what law means to ordinary people when they encounter or confront problems in everyday situations.

Drawing from these scholars’ approaches and focusing on labour relations in Vietnam, this book understands labour law as a combination of three aspects: (1) the labour law regime, that is, legal institutions and processes set out in the Labour Code; state policies and regulations associated with the Code; and measures, such as the establishment of strike action teams and legal aid activities, introduced by the state to enhance implementation of the law and associated policies and regulations; (2) the language used in the Code and other aspects of the labour law regime, and the values and understandings embedded in it; and (3) the practices through which law and associated state policies and regulations are implemented (or not implemented) by officials, factory managers, and others. The book examines how these three aspects of labour law influence the way factory workers justify their claims and the type of actions they take to resist and demand justice against abusive management. It argues that labour law is only one factor shaping workers’ articulation of what is fair and unfair and one aspect of what generates their resistance to injustice. The way workers turn (or do not turn) to labour law depends on their perceptions of the relationship between the law and the morality of workplace behaviour. These perceptions, in turn, are constructed through their experiences on the shop floor and with legal institutions and processes, and are shaped also by both socialist ideology and longstanding cultural norms.

Further analysis of the values and perceptions underpinning workers’ resistance, as expressed in interviews and verbal and written accounts, will contribute to addressing the following questions:

- How and to what extent do workers draw on labour law to make sense of their relationship with management, the state and unions, and of their workplace problems?
- How do workers use the language of labour law to demand justice? In employing that language, do they mean to condemn illegal practices and call for a proper implementation of law, or do they want to convey a different set of norms and expectations about workplace behaviour, or both?
- In their demands for justice and acts of resistance, do workers evoke a sense of legal rights or other notions of rights, and what is the relationship between their different notions of rights?

The answers to these questions will be elaborated along two strands of socio-legal enquiry, concerned with, firstly, how individuals perceive and act in response to grievances in their everyday lives and, secondly, how they engage with, avoid, or resist law. The first strand of inquiry is informed by Felstiner, Abel and Sarat's (1980/81) exploration of how disputes emerge from the way affected parties make sense of and interpret their experiences. How people react to an injury incident, from naming to blaming and claiming, is contingent on the subjective views of the injured towards related events and situations. In this social construction of disputes, language and understandings derived from certain state laws and policies provide individuals 'with a powerful set of interpretive tools' (Marshall 2003, p.661), among other sets of non-legal frames and expressions. Thus, in examining law as part of dispute experiences, scholars have found varying narratives that may be constructed by or clash with particular laws, and these narratives in turn account for individuals' decisions to escalate their grievances or drop their cases.

For instance, Austin Sarat's research (1990) provides insights into the way American welfare recipients navigate the legal service and bureaucracy to claim their benefits. Most frame their problems in terms of their personal needs and based on a sense of urgency, before invoking formal rules as a last resort. Another study of sexual harassment in US workplaces reveals that female employees rely on legal standards as well as other 'interpretative frames' to decide whether their experiences constitute sexual harassment (Marshall 2003, p.659. See also Quinn 2000; Marshall 2005). These other interpretative frames stem from their views about male dominance in the workplace, professional dignity, and sexual freedom, and often play a major role in their judgements of and reactions to their colleagues' behaviour. Indeed, it is precisely these other non-legal constructions of workplace conduct, which were somehow internalized

and tolerated by the harassed, that have limited law's power in protecting female employees against abusive practices.

The second strand of inquiry, on law and resistance, situates law within the nexus of power relations at a micro level and investigates how individuals' actions represent conformity to and/or resistance against the power to which they are subjected. This strand of inquiry investigates resistant acts and behaviour concealed from the public view and, importantly, 'the way in which people make sense of the law and legal institutions' (Ewick and Silbey 1992, p.734), that is, their legal consciousness. Studies of legal consciousness are not limited to an examination of subjects who have experiences with laws and law enforcement institutions, but also extend to those who refuse to obey or who evade law (Engel 1998, Ewick and Silbey 1998, Gilliom 2001). These varying uses and attitudes towards law can be explained by the social and cultural contexts shaping individuals' lived experiences.

Socio-legal studies also present a critique against those that tend to treat consciousness as a uni-linear cognitive development or as epiphenomenal to resistance. Viewing consciousness as embedded within social and cultural practice, Ewick and Silbey (1992, p.742) highlight that:

[...] we see legal consciousness as something local, contextual, pluralistic, filled with conflict and contradiction. The ideas, interpretations, actions and ways of operating that collectively represent a person's legal consciousness may vary across time [...] or across interactions [...]. To the extent that consciousness is emergent in social practice and forged in and around situated events and interactions [...], a person may express, through words or actions, a multi-faceted, contradictory, and variable consciousness.

The story of an African-American working class woman covered in their research exemplifies the various expressions and contingent nature of consciousness. While this woman was incorrectly charged with causing a car accident, she nevertheless accepted and obeyed the court verdicts, but later returned to appeal the verdict with assistance from her employer and a local attorney. In their analysis, Ewick and Silbey do not only attend to this woman's concrete actions in response to the charge she faced, but also the way she perceived the charge and the court procedures. As her experiences transformed from being subject to the law enforcement authorities to employing available resources to contest their power, her consciousness shifted from conformity with to resistance against law and the power exercised through it.

Research on labour resistance in authoritarian contexts like China has benefitted from disputing and legal consciousness approaches. In her 2006 *Law and Society Review* article, Mary Gallagher notes that the legal consciousness of employees who receive formal legal aid is

varied and can be contradictory rather than emerging and developing in a singular linear fashion (2006, pp.785–787). The author demonstrates that through their legal experiences, aggrieved workers developed a consciousness of ‘informed disenchantment’ (p.783): having gained legal knowledge and access to legal institutions to fight for their rights, they were subsequently disappointed by the functioning of the court in delivering redress. The plaintiffs’ previously high expectations of the legal system were undermined by their real experiences of it as involving complicated processes and being more favourable to their employers (p.804). Xin He, Lungang Wang and Yang Su (2013) also utilise the idea of legal consciousness to explain collective actions of wage claimants to demand compensation, such as occupying government offices or threatening suicide. He and colleagues argue that wage claimants’ ‘cultural perception of justice’ (2013, p.709), which embodies the notion that one should be fairly paid for one’s work, drives them to take disruptive actions. This research takes into account the role of the state’s laws and regulations as well as other sets of norms and values in conceptualising individuals’ legal consciousness. These studies offer valuable insights into the social (in)significance of law in a post-socialist context, yet they still leave unaddressed the complex, rather than contradictory, nature of the relationship between law and other sets of norms and values in shaping the form of consciousness. This book suggests that the relationship between law and morality in post-socialist regimes is complex and mutually reinforcing. It extends the analytical focus beyond instrumental and strategic approaches to state law and policy, that is, whether and how workers succeed or fail in deploying state laws to seek redress and pursue their causes. In this study, workers’ acts of resistance, such as strikes and lodging of letters, present the appropriate settings through which to unpack values, practices and ideas about law. In looking at workers’ verbal and written accounts, I highlight the importance of understanding workers’ interpretations of their workplace experiences prior to their actions and to certain events surrounding labour disputes. These experiences include workers’ interactions with shop floor managers, supervisors and their fellow workers; the emergence of workplace grievances; and other experiences (for example, their past engagement with legal aid and law enforcement institutions) that motivated workers to seek justice or prevented them from doing so. These experiences are crucial to our understanding of how law penetrates workplace relationships and how it enables and/or constrains workers’ contestation of managerial power. The analysis also fleshes out different values that shape workers’ claims-making, and in turn sheds light on the socio-cultural contexts shaping the constructions of workplace (in)justice in Vietnam.

## **The field research**

This research employs qualitative case-study analysis of documentary evidence and fieldwork, conducted from December 2014 to April 2015, and from December 2015 to February 2016. The field site is Đồng Nai Province, one of the top regions of rapid industrial development in the south of Vietnam. The Đồng Nai Labour Federation, which is the provincial branch of the VGCL, is well-reputed for its emphasis on promoting legal education to factory workers. The Legal Aid Centre (LAC), affiliated with the provincial labour union, has been in operation for more than two decades and has become a model for legal aid activities in other industrial hubs. Đồng Nai is also an industrial hub that, together with Hồ Chí Minh City and Bình Dương province, account for the highest incidence of strikes and labour disputes in Vietnam since the early wave of foreign investment in the 1990s. From 2009 to 2014, strikes in these localities account for 60 to 70 percent of strikes happening over the country (VGCL 2015, p.1). In Đồng Nai, the number of strikes per year climbed steadily from 1995 to 2005, peaking at 185 in 2008, then dropping to 36 in 2014 (Đồng Nai Labour Federation 2014. See also Table 1.1 for national and provincial figures). In this province, I concentrated on three areas: Biên Hoà city, Nhơn Trạch and Trảng Bom districts, which have the largest numbers of enterprises and have been fraught with strikes. Labour relations and labour dispute mediation in these areas are overseen by the upper-level unions, which are VGCL branches at district levels and within industrial zones. Around 50 to 60 percent of strikes in these areas have occurred in January–February, when workers expect a wage rise and year-end bonus from the company management.

Year	Đồng Nai (A)	Hồ Chí Minh City (B)	Bình Dương (C)	Nationwide	Percentage of (A), (B) & (C)
2009	42	70	71	342	53.6
2010	147	62	131	507	67
2011	168	201	328	993	70.1
2012	47	109	234	601	64.8
2013	39	97	103	384	62.3
2014	36	81	71	293	64.1

Table 1.1: Number of strikes in Đồng Nai, Hồ Chí Minh City, Bình Dương compared to total strikes nationwide from 2009 to 2014 (Adopted from VGCL 2015)

I obtained most of my data by conducting semi-structured in-depth interviews with migrant factory workers, who make up around 60 to 70 percent of factory workers in the province. It was much easier to approach migrant workers, as they live in concentrated rental areas whereas local workers, already residents, are scattered throughout the province. A yet more substantial reason for focusing on migrant workers is that the added financial burden of living away from home may influence the way they articulate their demands and grievances.<sup>8</sup> I should note that my interest in migrant workers does not stem from any evidence that they have organised for collective actions through native-place networks, nor that they are often the most vocal informal strike leaders (Pringle and Clarke 2011, Trần 2013). The focus of this research is not on how workers organise, but on how they draw upon law and other discourse and practice to justify their grievances and actions.

The way I designed interview questions was informed by Ewick and Silbey's approach (1998), which aims to explore how legal language and experiences permeate people's everyday experiences. Ewick and Silbey explain that in designing their method, they 'did not want [their] questions to imply or enforce a conventional definition of law and legality,' nor 'ask people about their legal problems or needs' (1998, p.24). They therefore directed their interviewees to start with a depiction of casual events and stories about their neighbourhood, work and family, and then asked more structured questions as interviewees mentioned particularly telling stories or legal matters. I found this a very fruitful way to unearth the relevance of law in social and often taken-for-granted contexts.

In a similar way, I did not frame my interview questions around legal terms, such as ‘(collective) disputes (*tranh chấp (tập thể)*),’ or ‘rights and interests,’ but tried to elicit and analyse whether and how interviewees refer to these terms in their response to my questions. My approach is slightly different from Ewick and Silbey’s in that most of my questions centre on workers’ concerns and experiences at work, although I allowed interviewees to freely talk and elaborate on their other family and social concerns in their responses. In general, I found it useful to frame questions around common language, using terms like ‘strikes’ (*đình công*), ‘grievances’ (*bức xúc*), and ‘problems’ (*vấn đề*). In trying to ascertain how workers understand justice, I also did not use the word ‘fair’ or ‘just’ (*công bằng*), or the opposite word ‘unfair’ (*bất công*) in asking questions. Interviewees’ responses to my general questions about details and past events at work have sufficed to elicit their views and experiences of (in)justice. Compared to a direct observation of strikes, which are unpredictable and might be deemed politically sensitive, this method of interviewing workers in a commonplace setting allowed me to contextualise and appreciate workers’ situations without risking harm to them for their participation in the project.<sup>9</sup>

My research participants, however, are also different from those of Ewick and Silbey. These authors make it clear that they are interested in exploring the voices of a diverse group of people rather than just those who ‘lodge their complaints, voice their grievances, seek their rights, or demand justice’ (Ewick and Silbey 1998, p.20). My research, in contrast, takes interest in those who have expressed dissatisfaction. My interview questions therefore were more structured around workplace complaints and grievances, but I usually asked in general terms and allowed workers to talk freely and at times digress from the questions. In analysing the interview transcripts and notes, I was able to see whether and how aspects of labour law arise in their interactions with and perceptions of the unions, their management and state authorities, as well as their justifications for silence or resistance.

Unknown to the area and not having previous contacts with workers, I first approached an acquaintance from the local Youth Union in Nhon Trạch district who knows the locations of workers’ residences. I then approached potential participants by accompanying her to workers’ rental areas on Sundays, bearing in mind the names of a few companies where strikes had occurred.<sup>10</sup> The rental areas are located in small alleys, about ten minutes by motorbike to get to from the main roads. There are usually 15 to 20 units in each of these rental areas, which sometimes have an entry gate and a board of regulations (regarding tenants’ behaviour) hung up by the landlords near the gate. Most of the units that I visited have a half storey upstairs and

can accommodate a family of four including children. The living area where I sat and talked to the workers, which is about nine square metres, is also an area for dining and sleeping. Even on Sundays, it was sometimes difficult to meet workers, since they were often working overtime. When they were at home, workers would often have their doors open, with their children playing and running around. They would often be engaged in chatting with their neighbours or cooking meals together. Later on in the field trip, I approached friends, acquaintances and relatives of core workers<sup>11</sup> (*công nhân nông cốt*), who helped with the recruitment process but did not intervene during the interviews. There were refusals from potential participants, mainly because workers are hesitant to talk about their workplace conditions to outsiders. Thirty ordinary workers, ranging in age from 25 to 55 years, agreed to participate in the research. They worked across six different companies belonging to the food, wood manufacturing, and footwear and garment industries. In the remainder of the book, very limited information about each company will be disclosed, so as to protect the identity of research participants. All interviews with workers were conducted either at their rental units, workers' social gathering place near their units, or in cafés.

Another important research participant group was the core workers who received legal training from an Oxfam-funded project. These workers are different from other workers in that they are knowledgeable about labour law and have more contacts with union officials at district and provincial level as a result of their legal training. I approached these workers through the lawyer from the LAC. My interviews with them were structured around issues similar to those discussed with ordinary factory workers. In addition, I asked general questions about their opinions and evaluations of labour law, policies, and disputes, and more specific, detailed questions about the role of the state and union in protecting workers' interests. I had several follow-up interviews and conversations with them during the fieldwork. There were in total 14 participants, including five women, in this group. The small number of female compared to male core workers is due to the nature of legal aid commitments and funding. Briefly, the time demanded of legal aid prevents female workers with family commitments from actively engaging with this activity and therefore, only a small number of them were known to me during my field trip.

Other data used in the book were obtained from interviews with union officials in upper-level unions, which are local branches of the VGCL, labour mediators in the city/district labour bureaus, officials of the industrial zone authority, and the labour lawyer. All these interviewees are key parties overseeing labour relations, legal aid activities, and settling labour disputes in

the province. Lastly, I interviewed a manager and a human resource manager in two strike-affected foreign-owned companies, to learn how they understand and evaluate the current Labour Code as a factor that stirs up or contains labour disputes in their companies. I obtained access to these two interviewees through the industrial zone authority. It was important to approach workers and their managers through two separate channels, so as to protect workers' identities and ensure that their sharing of information with an outsider was not known to the managers.

Other sources for the book include workers' complaint and petition letters, obtained from union offices in Đồng Nai Province and from workers themselves, with one letter published in the national labour newspaper, *Labour* (Lao Động). Within these letters I am interested in whether or not workers draw on the language of the Labour Code and associated policies and regulations in describing their grievances and justifying their actions. A close reading of these written accounts complements the verbal narratives as they provide powerful testimonies of the way workers depict their experiences on the shop floor and articulate a sense of (in)justice. Other sources used for this research include policy decisions and official guidelines relating to labour relations, labour disputes and strikes in the field site province, as well as news articles published online in national and provincial newspapers focusing on labour issues.

## **Chapter Outline**

The book is structured as follows. Chapter 2 discusses key aspects of Vietnam's labour law regime, including the Labour Code, the government's annual minimum wage adjustment, the union's legal aid activities, and union and state discourse about strikes. Chapters 3 to 6 are dedicated to analysing verbal and written accounts of three forms of workers' resistance. Chapter 3 draws on interviews discussing workers' grievances in strike affected enterprises in Đồng Nai province, with an in-depth focus on a food processing company. The recurrence of strikes in the case study area from 2010 to 2014 enables an exploration of the link between the local state's strike settlement measures and workers' acts of resistance. I posit that the regulatory effects (or failures) of strike settlement and prevention partially do contribute to the recurrence of strikes. But the more important contributing factor lies in the state's and management's failure to meet what workers understand to be their moral obligation to award the workers a fair payment for their labour.

Chapter 4 analyses workers' letters lodged at the upper-level union offices in 2013 and 2014 and a grievance letter that made news headlines. The chapter examines the extent to which the

language and values embodied in labour law shape and construct workers' accounts of their experiences on the shop floor and the contexts in the lead-up to their writing. These letters are telling not just because of the channels and audience to which they are directed, but also because they reveal important perceptions of labour rights and the fusion of legality and morality in workers' pursuit of justice.

Chapter 5 looks at the legal aid project and explores the views and activities of core workers involved. It sketches out the key functions of the LAC and how messages about workers' capability to defend their rights and interests are circulated through the provincial labour news. The second part is about core workers' interactions with ordinary workers, specifically concerning their beliefs and attitudes towards the role of law and legal aid in advancing labour rights. Chapter 6 explores three stories of core workers' involvement in letter writing and mobilisation against unfair practices at their company. Individually, two of these workers also brought their management to the union office and to the court. Drawing from interviews and core workers' letters, I demonstrate whether and how their understandings of workplace grievances and ideals of justice differ from ordinary workers mentioned in the previous chapters. The remainder of Chapter 6 will follow up on the resolution processes and outcomes after workers lodged their letters. The aim is to grasp the dynamics of their legal consciousness through the course and resolution of their petitioning process. The final chapter revisits the link between law, morality and justice in post-socialist regimes and the debate on rights consciousness. It also reflects upon the nature of law and popular resistance in authoritarian regimes, and evaluates the role of law in generating social change and advancing social justice.

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<sup>1</sup> Foreign enterprises account for 2.7 percent of all enterprises in Vietnam in 2015, dropping from 3.9 percent in 2000 (General Statistics Office 2017a). However, registered foreign capital has increased over the year, jumping from 6.84 million to 24.1 million US dollars from 2005 to 2015, despite suffering a significant fall after 2008 following the aftermath of the Asian Financial Crisis (General Statistics Office 2017b). The total disbursed foreign capital has seen a more stabilising trend since 2008, ranging from 10 to 14 million US dollars each year.

<sup>2</sup> Government of Vietnam (2009). Decree 13/NQ-CP on the directions and measures to attract and manage foreign direct investment in the future.

<sup>3</sup> See Chan and Norlund (1998) for a comprehensive discussion of Chinese and Vietnamese labour regimes.

<sup>4</sup> James Scott's moral economy framework (1976), which traces the values that shape social relationships and inform understandings of justice in pre-capitalist peasant society, has been referred to occasionally in analyses of labour resistance in China and Vietnam. For Scott, subsistence needs are a fundamental right of agrarian societies and infringement of this right has been a major cause of peasant resistance in times of crisis (Scott 1976, pp.6–10). Having their subsistence needs fulfilled becomes a benchmark for peasants to judge whether the state and landlords are treating them in an ethical or exploitative manner.

<sup>5</sup> I use the term 'capitalist' here to refer to a model of development in which the state allows and facilitates the growth of private capital. I note, however, that Vietnam in particular still holds on to socialist ideology. The proclaimed 'socialist-oriented market economy' (*kinh tế thị trường định hướng xã hội chủ nghĩa*) is a 'multi-sectoral commodity economy that functions according to market principles and follows the management of the State under the leadership of the Communist Party' (Central Committee of the CPV 2011).

<sup>6</sup> In Vietnam, the saying 'the king's edict stops at the village gates' (*phép vua thua lệ làng*) (Wells-Dang 2014, p.162) is often quoted by legal scholars to illustrate the dominance of local social values over new state laws, which are seen as transplants of global standards.

<sup>7</sup> An offshoot of the law and society movement in the US, socio-legal research has moved beyond legal studies of texts and formal law-making processes and shed light on the relevance of law in individuals' pursuit of justice and social movements (Merry 1990; Ewick and Silbey 1992; McCann 1994; McCann and March 1996). This law and society intellectual movement emerged in the 1970s and originally centred on illuminating the gap between 'law in the books' and 'law in action' and uses 'methods of behavioral science' to examine how law matters in people's approach to social problems (Liu 2015, p.3).

<sup>8</sup> Other sources have also stressed the socio-economic disadvantages of migrant workers compared to local workers, which are mainly due to the household registration system (*hộ khẩu*) in Vietnam that ties a citizen's one and only legal residence status to their household (Hoang 2011). Migrant workers thus face difficulty in accessing social services, such as public healthcare, childcare and children's schooling, at their destination provinces.

<sup>9</sup> My involvement in a strike that is deemed politically sensitive, if by chance discovered by the state's civil security forces, might have caused trouble for the workers with whom I talked.

<sup>10</sup> Information on strikes, including the company's name, the reasons and resolutions, the number of workers involved, the duration of strikes, was obtained from the upper-level and provincial unions.

<sup>11</sup> As will be discussed shortly, these core workers received training about the Labour Code and other labour laws and policies and were introduced to me by the Legal Aid Centre, which belongs to the provincial Labour Federation. Here I wish to reiterate John Gilliom's note in his study on American welfare mothers, which emphasises the importance of obtaining 'the level of trust necessary to undertake meaningful interviews' (2000, p.46) rather than the scientific representation of the sample. Interviews with mothers receiving welfare in his

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research were indeed conducted by two women who share the same social status and locality with his research participants (p.45).