Workplace (In)justice, Law and Labour Resistance in Vietnam

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April 2017

A thesis submitted for the Degree of Doctor of Philosophy of The Australian National University

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ACKNOWLEDGEMENTS

I owe a great deal to many people and institutions for their support for the completion of this thesis. Any shortcomings of this thesis remain my own.

I foremost wish to express my sincere gratitude to the chair of my thesis panel, Prof. Tamara Jacka, for her intellectual guidance, professional advice and mental support. Her expertise in doing ethnography, discourse analysis, migrant workers and social change in China, to name but a few areas, has provided invaluable comparative input for my thesis. I am especially thankful for her patience, dedication, critical comments, and meticulous editing that have tremendously helped transform my ideas and writing. She has always stood by all of my applications, from entry to the doctoral degree to ethics clearance and conference funding, and ensured that all my PhD milestones went smoothly. I am also thankful to Assoc./Prof. Sally Sargeson and Assoc./Prof. Philip Taylor, the two co-supervisors, for constantly encouraging and pushing me to go beyond my comfort zones. Their expertise on labour process theory, and political and social change in China and Vietnam, has helped boost my understanding of key issues and sharpen my analysis. I also thank Dr. Kim Huynh, an academic adviser in my panel, for his professional tips, his sharing of useful insights on Vietnam, and for helping me secure some tutoring spots.

During the past three years, I have also been indebted to various forms of support from people other than my supervisors. Wendy Baker’s selfless editorial assistance and intricate thoughts have helped me transform my drafts and ideas. Her mentorship, dedication and care are so meaningful for my candidature and the future path that I will take. I thank Dr. Nick Cheesman for his willingness to read short extracts from my thesis and offer important advice on the socio-legal scholarship. Prof. Kanishka Jayasuriya, who used to be my honours supervisor, has also inspired me to pursue this academic path, and offered me valuable comments on some of my papers and constant professional support.

In addition, I have benefited greatly from advice received at workshop and conference attendances, and from anonymous reviewers’ critical comments on my journal articles. I am fortunate to have had the opportunity to present my proposal and then thesis findings at the Vietnamese Legal Studies Graduate Workshop at the Melbourne Law School. Prof. Pip Nicholson and Prof. John Gillespie have guided me to think more deeply about the analytical framework as well as the main argument. During and following the Young Scholars’
Workshop held at the National University of Singapore, I received critical input and comments from Prof. David Engel and Dr. Lynette Chua, who also offered me a chance to revise a paper for a special journal issue. Other conferences that I attended throughout the PhD, thanks to financial support from the Department of Political and Social Change and other institutions, were vital for my learning and academic networks.

It was a privilege to conduct my research and spend the past few years at the Department of Political and Social Change. I thank my current and past PhD fellows Aisi Shang, Chit Win, Peter Chaudhry, Brendan Forde, Meixi Zhuang, Eve Warburton, Ana Alonso, Sofiah Jamil, Risa Jopson, Ahmad Muhajir, and others, not just for research-related matters but also for making my office days so fun and stimulating. I am also grateful for Allison Ley and Helen McMartin for their attentive and patient administrative support, and Maxine Macathur for her careful proofreading of my thesis. Thank you kindly, Chị Phạm Thu Thủy, for offering to proofread my papers, and for our many relaxing and delightful lunch treats. Other academics and colleagues at the Department of Political and Social Change have also raised many useful questions and suggestions at my seminars. In addition, many discussions and conversations with other then PhD friends such as Xiaoxiao Xie, anh Đỗ Thanh Hải, anh Bùi Hải Thiêm, chị Nguyễn Văn Hạnh, were also very useful and memorable. Special thanks to anh Đỗ Hải Hà for generously sharing with me his fieldwork materials and experiences, and for advising me to take into account issues of morality in my research.

Crucial to my thesis is the information obtained from my fieldtrip in Đồng Nai province. I thank all people who have helped me with data collection and approaching participants, and shared with me their stories. The voices of my respondent workers are especially precious and inspirational, and I always remember many thought-provoking as well as friendly conversations that we had.

I wish to express my heartfelt gratitude to my parents, ba Nguyễn Lục Hòa and má Lê Hồ Thị Phương Phi, and my young brother Nguyễn Lục Hào, for their selfless love and valuable life lessons, and for always trusting me in my academic pursuits. I am also indebted to thầy Phan Hoàng Gia, my life-long English teacher in Vietnam, for his companionship and constant encouragement. Last but not least, my dearest thanks to my fiancé, Nguyễn Trọng Nghĩa, for meaning so much to my life, dreams, and imagination.
ABSTRACT

The limitations of the Labour Code and its implementation in Vietnam have been identified by scholars as the main reasons for the phenomenon of wildcat strikes since the country’s economic opening in the early 1990s. Yet there has been little analysis concerning how workers themselves perceive the Labour Code and other aspects of labour law, and how labour law matters in workers’ resistance to workplace injustice. This thesis aims to fill this gap, addressing the question ‘How does labour law shape labour resistance in Vietnam?’

Adopting a socio-legal approach, the thesis understands labour law as a combination of three things: (1) the labour law regime, which includes legal institutions and processes set out in the Labour Code and other measures to enhance its implementation; (2) the language used in the Code and the values and understandings embedded in it; and (3) the practices through which the Code and associated state policies and regulations are implemented (or not implemented) by officials, factory managers, and others. The thesis develops an understanding of labour law from workers’ perspectives. It examines the extent to which workers’ values and ideas about justice are shaped by and conform with, on the one hand, the language of the labour law regime and the values embedded in that language, and on the other hand, experiences and discourse that differ from those language and values.

Based on seven months of qualitative fieldwork conducted in 2014 and 2015 and an investigation of factory strikes and workers’ complaint letters in Đồng Nai Province, an industrial hub in the south of Vietnam, the thesis argues that labour law is only one factor shaping workers’ articulation of what is fair and unfair and generating their resistance to injustice. The way workers turn (or do not turn) to labour law depends on their perceptions of the relationship between 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 socialist ideology and longstanding cultural norms.

Most workers use legal language to amplify their moral judgements, underpinned by the norm of subsistence, reciprocity, and respectful treatment. A smaller group of workers deploy legal language to condemn illegal practices and call for a proper implementation of law. However, they also combine their legal claims with moral ones. These moral claims are shaped by both values underpinning certain articles of the Labour Code, longstanding
cultural norms, and the socialist value of equality. The relationship between law and morality becomes fluid when they complement and intertwine with each other in workers’ appeals.

This thesis makes an original contribution to the study of law and resistance in post-socialist regimes by suggesting that the relationship between law and morality is complex and mutually reinforcing. It sheds light on the different values underpinning workers’ experiences of (un)fairness, understandings of their rights, and claims for justice.
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INTRODUCTION: LABOUR LAW AND LABOUR RESISTANCE IN VIETNAM

Since the Labour Code was introduced in Vietnam in 1994, Vietnamese workers’ strikes have declined in frequency, but continue to break out in large numbers each year.\(^1\) Scholars have identified limitations in the Labour Code and its implementation as the main reasons for the persistence of strikes in Vietnam. Yet there has been little analysis concerning how workers perceive the Labour Code and other aspects of labour law, and how labour law matters in workers’ resistance to workplace injustice. This thesis aims to fill this gap, addressing the question ‘How does labour law shape labour resistance in Vietnam?’

The term ‘labour law’ here is used as shorthand to refer to a combination of three things: (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 Code 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 the Code and associated state policies and regulations are implemented (or not implemented) by officials, factory managers, and others. The thesis 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. The aim is to understand whether and how labour law shapes or reinforces workers’ experiences and understandings of (in)justice on the factory floor, and to evaluate its enabling and/or constraining effects on their resistance.

The thesis 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 socialist ideology and longstanding cultural norms.

\(^{1}\) The number of strikes declined from a peak of 993 in 2011 to 601 in 2012 and then 293 in 2014 (Vietnam General Confederation of Labour, 2015).
The thesis focuses on two forms of workers’ resistance: factory strikes, and complaint writing and petitioning. I understand resistance as acts that question or challenge power arrangements, authority, or practices of subjection. In Vietnam, strikes, which are largely spontaneous and without union organisation, have been the most popular form of workers’ resistance. Demands for strikes have been varied, but they all represent challenges to managers’ conduct and policies on the shop floor, and less frequently, state laws and policies (Tran 2013, Tran 2007). While the density of the academic coverage of strikes in Vietnam is justifiable, it has nevertheless diverted our attention away from other forms of resistance such as petitioning and complaint writing. These other actions, 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 thesis, these actions convey workers’ voices, grievances and demands, and question or challenge existing practices by management on the shop floor and at times by state authorities.

This thesis makes an original contribution to the scholarship on labour resistance in Vietnam, and by extension, post-socialist regimes, by focusing, first of all, on the different values underpinning workers’ demands and acts of resistance, and the relationship between those values and their experiences and understandings of labour law. This focus differs from that of existing works, which are mainly concerned with the organisation of workers’ acts of resistance, and their procedural aspects, that is, whether they have taken place inside or outside the avenues permitted by state laws. The thesis also differs from existing works in focusing on workers’ own perspectives of the institutions and processes set out in the Labour Code to understand how useful or relevant they are for their pursuit of justice.

The thesis also contributes to our understanding of resistance more broadly, by extending the analytical focus beyond the instrumental and strategic approaches to state law and policy that dominate existing scholarship on resistance in Vietnam and elsewhere in East and Southeast Asia. Law is not seen as a uni-dimensional set of rules formalised by the state; rather, the thesis considers law as multi-faceted and subject to different uses and interpretations within society. The analysis thus sheds light on the role of various aspects of labour law in shaping workers’ experiences of (un)fairness and understandings of their rights, and how it shapes and constrains their acts of resistance.
In reviewing the literature, some parallels can be drawn between the situation of factory workers in China and Vietnam, two post-socialist regimes with comparable labour institutions. While my study is not a comparative study of the two countries, reference to the China scholarship allows me to complement the less developed literature on Vietnam, and more importantly, to draw upon relevant theoretical insights to aid with further analysis. This thesis also seeks to contribute to the literature on labour studies in China as well as Vietnam, by broadening the current analytical focus on law and popular resistance.

In both China and Vietnam, the development of the legal regime after economic reforms has aimed to consolidate political power and legitimacy. Chinese and Vietnamese state leaders respectively have paid lip service to the rhetoric of the ‘rule of law’ and the ‘law-based state’ (Gillespie and Nicholson 2005: 3-8) in order to project a positive image of the state towards society. While new laws have introduced and granted various rights to individuals, actual practices do not accordingly protect individuals against the state’s arbitrary rule but can be manipulated for the state’s interests. The next section will discuss how state law is analysed in the existing literature on labour resistance and state-labour relations in post-socialist China and Vietnam, and identify the strengths and weaknesses in this literature that further inform the analytical approach of this thesis.

**Capitalist development and working class struggles in post-socialist regimes**

An interest in the political economy of capitalist development\(^2\) dominates well-cited and recent studies of labour resistance in post-socialist China and Vietnam (see, for example, Chan, A. 2001; Chan, C. 2008; Pun 2005; Pun 2016; Friedman and Lee 2010; Friedman 2014; Trần 2013). Mostly inspired by Marxist theory, these studies examine the emergence and evolution of a new working class since the integration of China and Vietnam in the global capitalist economy. This economic transformation led to a surge of growth in private, typically labour-intensive and export-oriented domestic and foreign businesses, and a high demand for manual, unskilled labour. As businesses have sought to maximise their profits and drive down labour costs, the new working class, mostly made up of migrants from rural to urban and industrial areas, has been subject to exploitation and varying forms of

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\(^2\)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 and claims to pursue a ‘socialist-oriented market economy’ (kinh tế thị trường định hướng xã hội chủ nghĩa) (Central Committee of the Communist Party of Vietnam 2008).
managerial control on and off the shop floor (Pun and Smith 2007). At the same time, workers have lacked the institutional capacity to organise and collectively bargain with the state and capital. A perpetual cycle of exploitation, powerlessness and desperation has led these workers to take spontaneous action, mostly in the form of strikes and protests, to resist against capitalist structures and demand decent wages and working conditions.

From a Marxist perspective, state law is an aspect of the superstructure that controls and immiserates the workforce in the interests of the ruling class. 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 and 2016, Nghiem 2003, Trần 2013). Consequently, state law is rendered unfavourable to the latter’s interests. Thus, the promulgation of labour laws has served state and capitalist interests, rather than protecting or advancing workers’ rights (Chan, A. and Siu 2012; Chan, C. 2008; Trần 2013). From this perspective, 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, of which the law is a part.

Some Marxist-inspired scholars further argue that state law detracts from labour resistance. Through the lens of class consciousness, Anita Chan and Kaxton Siu (2012: 81) argue that the introduction of labour laws in China has stalled the development of class consciousness. First, Chan and Siu note that workers’ mobilisation of law, for instance, through litigation, indicates a pursuit of individual rights. It therefore detracts from acts of resistance that can push for workers’ collective rights and improve the situation of the working class as a whole (pp.88-89). However, their proposition is based on a dichotomous view of individual and collective forms of resistance and fails to acknowledge the potential for individual actions to embrace or trigger collective pursuits of justice. Second, Chan and Siu observe that, in their collective actions such as strikes, Chinese workers often put forth demands for rights as granted in the Labour Law rather than press for those beyond the law (p.82). In their view, the indicators of mature class consciousness include broader coordination of strikes beyond single factories and workers’ collective demands for independent unions, which are illegal,
as well as demands that are not allowed for in existing laws, such as for higher minimum wages. A high stage of class consciousness, when workers become a ‘class-for-itself’ (p.81), can only emerge when workers are able to challenge the legitimacy of state law and act outside its boundaries.

The debates on class consciousness have been vast, and it is beyond the scope of this thesis to fully address them. However, I wish to emphasise here that, in focusing on workers’ overt actions, mobilisation and demands, Chan and Siu overlook other social and cultural factors that inform workers’ consciousness and can generate their resistance. In the words of E.P. Thompson (1963: 10, 269), these factors include ‘traditions, value-systems, ideas, and institutional forms,’ which underpin working class experiences and contribute to class consciousness.3 My understanding of class consciousness is informed by this cultural approach, which has also been taken up by Angie Trần (2013), and Pun Ngai and Lu Huilin (2010) in their examination of labour resistance in Vietnam and China. By situating workers’ resistance within their experiences of migration and of the state’s economic transition, these authors identify and demonstrate how values informed by socialist ideology and the traditions of revolutionary spirit are woven through workers’ stories. However, it is unclear whether they also consider state laws as informing the values that shape workers’ experiences and contribute to their class consciousness.

Moral economy and labour resistance

A second strand of literature, of relevance to this thesis, considers aspects of ‘moral economy.’ This literature is not interested in law but instead traces the values that inform understandings of justice. The moral economy framework, as developed by James Scott in 1976,4 sheds light on the functioning and ethical values of pre-capitalist peasant society and accounts for their rebellion in times of crisis. For Scott, subsistence needs are a fundamental right of agrarian societies and infringement of this right has been a major cause of peasant resistance (Scott 1976: 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

3 In Thompson’s thesis, class is not a fixed category that is structurally determined by productive relations. It is always in the making and manifests ‘when some men […] feel and articulate the identity of their interests as between themselves, and as against other men’ (1963: 269).
4 The term ‘moral economy’ was first coined by E.P. Thompson in his 1971 article, The Moral Economy of the English Crowd in the Eighteenth Century, but it is James Scott who developed its analytical substance.
exploitative manner. Another central ethical value in peasant societies is ‘the norm of reciprocity,’ that is, ‘an obligation to return a gift or service’ (Scott 1976: 167) that one previously received. This norm shapes peasants’ expectations of the state’s and landlords’ behaviour in exchange for their labour, and although it is not a major trigger of rebellion, it is a key aspect of their notion of justice.

The ethics of subsistence have been referred to occasionally in literature on labour resistance in China, specifically relating to state workers’ protests in the post-socialist era (Chen 2000, Hurst and O’Brien 2002. See also Walder 1986). State workers were made redundant due to the restructuring or dismantling of state-owned enterprises, and subsequently called upon the state and management to uphold their moral obligations. According to Feng Chen (2000: 45-48), the laid-off 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 their worsening situation. William Hurst and Kevin O’Brien (2002) have made similar observation regarding livelihood concerns in state workers’ demands for their pensions, while also discussing the reciprocal nature of the socialist contract as reflected in workers’ accounts. The socialist contract, in brief, was based upon workers’ obedience to managers and state officials (Hurst and O’Brien 2002: 357) in exchange for a modest income and guaranteed social welfare. Workers acutely felt that a breach of reciprocal duties by their managers and of the socialist contract had occurred when their pension was not paid in part or in full after all their years of dedication and attachment to the state enterprise. These two articles demonstrate that ethical values of subsistence and reciprocity are not peculiar to pre-capitalist peasant societies but are also prevalent in industrial eras. The concept of subsistence ethics may be particularly significant for understanding strikes and protests of recent generations of migrant workers in China and Vietnam, as they have struggled to make ends meet in urban and industrial areas (see, for instance, Trần 2013: 182-198, Pun 2016: 151-155).

Despite their focus on workers’ perspectives, studies informed by the moral economy approach generally do not account for the role of state law in popular uprisings and protests. James Scott originally argued that subsistence ethics, as well as social norms of reciprocity, are universal values that underpin the functioning of different societies and the main explanations for social unrest (1976: 166-167). In leading us to pay attention to individuals’
subjective views of what is fair and ethical, moral economy studies neglect the role of formal institutions in informing or influencing those views. This oversight may be problematic in the examination of migrant workers’ protests, as they are now bounded by a legal labour regime in addition to being influenced by socialist principles. In this context, state rules and legislation should be taken into account in the analysis of workers’ understanding of justice and rights in the lead-up to their resistance. As Ching Kwan Lee claims, Chinese state workers’ moral and material demands are based both on ‘the socialist social contract,’ that is, the socialist state’s guarantee of employment and welfare in exchange for political obedience, and on ‘the current state rhetoric of legality’ (2007: 12, 112). Lee’s addition of state’s laws and legal campaigns highlights the fact that legal discourse and values deserve more analytical attention than as seen in the moral economy scholarship.

Thus far I have discussed existing approaches to analysing labour resistance in post-socialist countries, which draw on Marxist political economy and the moral economy framework. These approaches neglect or discount the role of labour law in workers’ pursuit of justice. Although they provide valid explanations as to how and why the majority of workers in China and Vietnam have bypassed or turned away from legal procedures, they fail to acknowledge, or properly address, practices, values and meanings derived from the law that underpin workers’ language and acts of resistance. The following section discusses how a third body of scholarship has brought the law back in and demonstrated how it matters in shaping a sanctioned form of labour resistance.

Rightful resistance: bringing the law back in

This third body of scholarship is informed by O’Brien and Li’s concept of ‘rightful resistance’ (2006: 2). 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, hinges on locating and exploiting divisions within the state, and relies on mobilizing support from the wider public. In particular, rightful resistance entails the innovative use of laws, policies, and other officially promoted values to defy disloyal political and economic elites [...] (O’Brien and Li 2006: 2-3).

In this conceptual framework, law is not just a set of uncontested rules enforced by the state and its legislative bodies, but can be subject to different uses and interpretations by those
affected by law. Research on rightful resistance shows that rules and language embedded in law have become strategic means for individuals to fight against injustice. Disadvantaged groups and individuals have learned of their legal rights and mobilised them to act against official abuse and corruption without resorting to violence or confronting the legitimacy of the state. In their case studies, for instance, O’Brien and Li (2006) demonstrate how villagers in China have become adept at suing local administrative malpractices through the Administrative Litigation Law. These villagers have effectively mobilised this law and petitioning avenues for their interests. Their resistance is ‘rightful’ in the sense that it evokes existing rules and other rhetoric coming from the state and therefore, to some extent, is tolerated by and elicits sympathy from central political elites (O’Brien and Li 2006: 28-29).

One significant point that we can draw from this literature is that state law can be appropriated by societal actors for purposes that might work against state interests (O’Brien and Li 2006, Lee and Hsing 2010. For studies on Vietnam, see Labbé 2011, Kerkvliet 2014). The legal endorsement of individual rights within new laws and policies is the key factor that enables rightful claims and individuals’ demands for rights protection. Of course, a ‘rightful’ claim-making and framing strategy is not without limitation, as it operates within a grey and fluid zone. Rightful claims may be tolerated by central authorities for a while and afterwards rejected, or accepted by some officials and not others (O’Brien and Li 2006: 51). The literature therefore illuminates the opportunities and constraints faced by aggrieved individuals in their engagement with the law, and lays the ground for further interest in the contribution of state law towards advancing social justice.

Besides the original empirical interest in Chinese villagers’ petitioning, the notion of rightful resistance can be applied to the case of factory workers to examine how they exploit legal and state-sanctioned means and rhetoric to act against abusive management. Workers’ rightful resistance can include such actions as lodging complaints and disputes via administrative bodies, filing labour lawsuits, and invoking legal labour rights (Friedman and Lee 2010: 517-519). 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 more by customary moral norms and
respect for social hierarchy than by codified written laws.\textsuperscript{5} Similar to rightful resisting villagers who do not transgress or challenge state rule, workers who engage with the law also commonly act within its boundaries, with most of them conforming to existing legislation rather than questioning or challenging its legitimacy (Hui 2015).

A closer look at the language of workers’ rightful resistance, as taken in Isabelle Thireau and Hua Linshan’s study (2003), reveals that workers’ mobilisation of law implicates different understandings of justice rather than necessarily conveying an invocation of legal rights. A part of Thireau and Hua’s article is dedicated to discussing workers’ complaint letters sent to the Letters and Visits Offices – the local-level government bodies in China charged with receiving and handling citizens’ complaints. Taken at face value, their resistance is rightful in the sense that complainants lodge their cases to an authorised channel and make sporadic references to rules and provisions in the state’s Labour Law (Thireau and Hua 2003: 98-99). However, at a more substantive level, such mobilisations of law aim to ‘find relevant and shared normative arguments’ (p.97), and to expose workers’ conditions ‘as self-evidently unacceptable rather than simply illegal’ (p.99). Complaint writers’ claims and accusations are mainly centred on fundamental norms of social justice, such as fair treatment, survival and human dignity, which they expect to be delivered by factory managers and the state. These findings resonate with those in Pun Ngai’s most recent book (2016), on migrant construction workers’ language during strikes and protests to demand unpaid wages. Pun claims that workers’ language is a combination of appeals to fairness and to law, but protesters place much stronger emphasis on the former, for instance, when they attack employers’ conscience and grieve about their hard work (pp.146-147). A valuable insight from these findings is that workers’ deployment of legal language does not necessarily shape a legal claim but may instead convey moral understandings of workplace (in)justice.

Despite their interesting findings, Thireau and Hua are silent on their concept of law. It can be inferred from their reference to O’Brien’s rightful resistance (1996) that law has become a strategic tool for aggrieved workers to seek justice. Yet their findings also reveal complainants’ expanded use of law, when they stretch the boundary of the legal/illegal to make the case for other moral values and expressions of justice. These findings beg for a

\textsuperscript{5} In Vietnam, the saying ‘the king’s edict stops at the village gates’ (phép vua thua lệ làng) (Wells-Dang 2014: 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.
broader conceptualisation of law to take into account socio-cultural values and what law means to aggrieved workers. Added to this conceptual gap is the authors’ narrow approach to analysing workers’ letters. In their textual analysis, they draw only on quotations and extracts that contain an explicit reference to ‘law,’ ‘Labour Law,’ or ‘workers’ legal rights and interests’ (pp.98-101). This narrow focus risks overlooking aspects of labour law’s values and practices that might have been expressed in general terms and lay language. Finally, although written complaints are valuable sources of data, they offer limited grounds from which to explore workers’ perceptions of law and what it means for workers’ pursuit of justice. A potential way to overcome this gap is to bring in workers’ verbal accounts and explore their experiences of law through the lens of rights consciousness.

**Workers’ rights consciousness**

A fourth strand of scholarship relevant to this thesis examines the link between law and labour resistance by unpacking workers’ ‘rights consciousness,’ which mostly refers to the way workers understand and perceive their *legal* rights. In the broader context, the notion of ‘rights consciousness’ has become a source of scholarly attention since the Chinese state started to promote the rhetoric of the rule of law and introduced a range of state legislation to govern society. Scholars have attributed the rise of workers’ rights consciousness to the Chinese state’s legal regime (Lee 2007), its legal education campaign (Gallagher 2006, Hui and Chan, C. 2012), and a variety of forms of legal support run by non-governmental migrant organisations (Becker 2014, Chan, C. 2012). The state’s legal development and other activities associated with promoting the rule of law have helped familiarise migrant workers and ordinary citizens at large with the language of rights and the function of legal institutions.

An article by Linda Wong (2011) usefully teases apart the notion of rights consciousness, while most other studies address this notion either in sweeping terms or as epiphenomenal to rightful resistance. Quoting Michael McCann (1994), a well-cited scholar in the field of law and social movements in the US, Wong considers rights consciousness as ‘the dynamic process of constructing one’s understanding of, and relationship to, the social world through the use of legal convention and discourses’ (p.873). Wong subsequently suggests that those who are conscious of their rights are ‘familiar with the laws and legal norms and can deploy such tools to contest parties who infringe on their rights’ (p.873). However, further discussion in the article and her quantitative survey method fail to do justice to the above
conceptualisation. For instance, while the survey of migrant workers’ experiences reveals a wide range of rights violation (pp.877-882), as can be expected, it is unable to tell us whether and how workers understand and interpret those violations through the lens of state laws. In another example, the finding that a large proportion of surveyed workers (about 35 percent) are willing to seek legal assistance (p.884) says little about workers’ attitudes towards law as a means to seeking redress. This quantitative approach thus fails to address the ‘dynamic process’ through which rights consciousness evolves and how it enables or constrains workers’ strategies of resistance.

Linda Wong is also ambivalent in her conceptual and empirical approach to rights. While she earlier conceptualises rights consciousness in terms of people’s use and understanding of legal discourses, in her subsequent analysis of survey data, the author considers migrant workers’ ‘reaction to negative stereotypes’ (p.882) as an indication of rights consciousness. Wong herself understands the negative stereotypes as a form of rights deprivation, for the protection against insult and other damage to personal dignity is listed as a fundamental right of all citizens under the Chinese Constitution (p.881). The problem with her claim here is that it is not clear whether or not the surveyed migrants similarly interpret negative stereotypes or their sufferings from discrimination in legal terms. It is quite possible that their survey responses do not indicate ‘rights consciousness,’ but rather, a set of fundamental social norms that they have acquired from outside legal discourse. In any case, Wong is insensitive to different ideas and understandings of rights that could be explored through the lens of rights consciousness.

Eli Friedman’s article on labour activism in China (2009) does not employ the conceptual lens of ‘rights consciousness,’ but does provide a clearer articulation of the dynamic process through which workers’ consciousness develops. The article examines the influence of foreign labour organisations on raising workers’ consciousness in China and traces how it enables disadvantaged workers to stand up against injustice. Friedman’s research highlights the success of the case-study association, the Guangdong Migrants’ Association (a pseudonym), in training and backing potential worker-leaders (Friedman 2009: 209). Drawing from the two case studies of workers’ organising in two factories, he details how the workers learned about their legal rights and ‘international human and labor rights discourses’ (Friedman 2009: 210) from the migrant labour organisation. Subsequently, in
their collective petitioning, while workers in one factory pressed for their legal demands, workers in the other case pressed for extra benefits and the setting up of an independent trade union. The workers’ actions and later activism, Friedman claims, would not have been possible without the transmission of knowledge about workers’ rights, both enshrined in the Labour Law and international labour rights discourse, and strategic support offered by the labour organisation.

Friedman’s evidence draws our attention to the different notions of rights transmitted by labour organisations and absorbed by activist workers. On the one hand, there are universal human and labour rights norms enshrined within international organisations’ agreements and implemented by all countries bound by those agreements. On the other hand, there are legal rights granted by a state’s legal regime that are generally narrower than those endorsed in international agreements. The Chinese factory workers in Friedman’s study seem to have learned about both sets of rights and utilised them in their resistance. Such empirical evidence in turn demonstrates that rights consciousness does not only manifest through acts of law-abiding resistance and claims, as suggested in rightful resistance literature, but also through demands for rights that transcend the boundaries of state law. Apart from these important findings, Friedman’s research would have benefitted from more discussion of how workers’ different understandings of rights interact with each other in their development of consciousness and claim-making.

A problem remaining with analyses of workers’ experiences informed by ideas about rights consciousness is that they do not fully explain how law contributes to people’s pursuit of justice. The reason is that they pay little attention to the practices through which state law is implemented, including businesses’ compliance or evasion of law as well as the settlement of labour disputes by state and union officials. This oversight is particularly problematic when considering the trajectories of workers’ labour resistance. As a case study by Ching Kwan Lee (2007) has shown, Chinese workers’ claiming of their rights through legal channels has later escalated into spontaneous street actions due to the form of dispute resolution undertaken by local labour institutions. Institutions and actors, such as labour dispute arbitrators and labour bureaus, were shown to enforce labour law and resolve matters in favour of employers, consequently causing arbitration and mediation efforts to spill over into ‘less predictable episodes of mass action’ on the part of workers (Lee 2007: 177). A case
study by Trần suggests that the situation is different in Vietnam. In this case study, the court’s inaction following workers’ filing of lawsuits led the latter to lose patience, give up their fight and ultimately seek other means to make ends meet, or to chase up their cases with no end in sight (Trần 2013: 279-280). These cases illustrate that law can contribute to workers’ resistance in varying ways, and is not always conducive to attaining justice for the workers.

Another gap in the rights consciousness literature is that it pays scant attention to values other than those coming from state laws and legal institutions that might also inform individuals’ understandings of their rights and their claims-making. An examination of these values is especially important in post-socialist contexts like China and Vietnam, where, in addition to new legal institutions, values that were important in past socialist political ideology or in traditional society have continued to shape social views and behaviour. For instance, as Ching Kwan Lee (2007) has shown in her research, besides their engagement with the state’s legal rhetoric and institutions, laid-off workers’ and pensioners’ claims reflect moral values derived from socialist ideology and the socialist social contract. These workers justified their grievances by drawing on, for instance, Maoist rhetoric of socialism and the government’s promise about workers’ welfare and pensions (pp.71-78). As her discussion indicates, law in itself does not wholly account for individuals’ perceptions of their entitlements and rights. Therefore, it is important to examine other sets of values and understandings that may also contribute to those perceptions. Lee’s intricate analysis would benefit from more elaboration of the relationship between the above institutions and sets of values, that is, whether and how they complement, overlap, or contradict each other in the meaning-making of workplace justice.

**Socio-legal approach to labour resistance**

The final strand of literature examined here draws inspiration from socio-legal studies, which are an offshoot of the law and society movement in the US. Socio-legal research has examined the relevance of law in individuals’ pursuit of justice and collective social movements (Merry 1990; Ewick and Silbey 1992; McCann 1994; McCann and March 1996),

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6. Workers in this dispute were employed in an unregistered company whose boss closed the business and ran away, without paying wages owed to workers.

7. This law and society movement is an intellectual movement that sheds light on 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: 3).
and, since the mid-2000s, has inspired a similar trend of inquiry in semi-authoritarian and authoritarian regimes in Southeast Asia (Chua and Engel 2015). The major contribution of the socio-legal approach is to shed light on the power of law within society rather than within legal and judicial institutions: to provide insights into how law shapes or constrains individual behaviour and contributes to norms relating to social interactions. A broader perspective into the social dimensions of law has given rise to a richer exploration of law’s empowering or constraining effects on popular resistance.

Mary Gallagher’s article on legal aid plaintiffs (2006) is the first among labour resistance studies in China that explains workers’ consciousness and resistance from a socio-legal perspective. Gallagher uses the term ‘legal consciousness’ in much the same way as other China scholars use ‘rights consciousness,’ but she relates her analytical and empirical discussions to the work of leading socio-legal researchers (e.g. Merry 1990; McCann 1994; Ewick and Silbey 1998). Consequently, compared to other China studies, Gallagher’s article is distinguished by the suggestion that legal consciousness is varied and can be contradictory rather than emerging and developing in a linear fashion (2006: 785-787). According to Gallagher, legal consciousness results in ‘changes in one’s feelings of efficacy and competency vis-à-vis the law, and changes in one’s perception/evaluation of the legal system’ (p.785). The author demonstrates that through their legal experiences, aggrieved workers develop a consciousness of ‘informed disenchantment’ (p.783). Having gained legal knowledge and access to legal institutions to fight for their rights, the workers in her study were subsequently disappointed by the functioning of the court in delivering redress. The plaintiffs’ previously high expectations of the legal system was undermined by their real experiences of it as involving complicated processes and being more favourable to their employers (p.804).

While Gallagher’s research echoes the rightful resistance literature in highlighting workers’ deployment of labour laws and the increasingly legal nature of labour disputes, it makes several novel contributions. First, it incorporates individual workers’ views and experiences of law into an examination of their resistance, rather than focusing solely on the means and outcomes of their legal mobilisation. It allows a more subjective and nuanced picture of what law comes to mean for the workers who turned to law for their problems. Interestingly, this research found that despite their unsuccessful lawsuits, past litigant workers would still turn to the court and refer their disadvantaged fellow workers to it when facing further managerial
abuse (p.806). This finding demonstrates law’s cognitive effect upon resistance: how it sustains workers’ hopes and expectations that they can attain their rights, despite the superior institutional position of power enjoyed by their employers. Ultimately, workers’ consciousness is multi-layered and changes over time, so cannot be conflated with legal knowledge or subsumed under any particular legal action.

Second, and relatedly, Gallagher’s findings challenge studies that exhibit scepticism about the role of state law in advancing workers’ rights and activism (Chan, C. 2008; Chan and Siu 2012). Such scepticism, which concerns the individual nature of workers’ use of law, fails to recognise that the boundary between individual and collective attainment of rights can be fluid. Gallagher’s study provides an exemplary illustration of how individual actions sometimes draw upon a sense of collectivity. Her research details how litigant workers share their legal knowledge and offer legal assistance to fellow workers in need, following their own experiences with the law. Importantly, one of her respondent workers, after winning his arbitration, served as an ‘informal consultant’ for other co-workers in his company (p.808). There is no detail about the role this worker might have had in promoting collective solidarity or resistance at his workplace. However, the evidence in Gallagher’s article shows that at the very least, his individual action enabled a broader form of awareness-raising that also benefitted other workers.

As in the rightful resistance literature, Gallagher’s research is limited to examples of workers’ narratives and language derived explicitly and obviously from labour laws. This limitation might be due to the author’s sole focus on the contexts in which workers learned to speak the language of law, navigate legal procedures, and present themselves before the courts. She leaves unaddressed what law means to aggrieved workers: did they employ the above legal measures with a strong sense of their legal rights, or were they similar to the workers in the studies conducted by Lee (2007), Thireau and Hua (2003), and Pun (2016), in merely using legalistic language as a tool to convey their moral perceptions of fairness?

A study by Xin He, Lungang Wang and Yang Su (2013) overcomes the gap in Gallagher’s earlier research by exploring the legal consciousness of workers, in this case, wage claimants, outside the legal space. Their analysis follows a prominent strand of socio-legal study that takes interest in how law functions in common settings and proposes that legal consciousness can be multi-faceted and contradictory (Ewick and Silbey 1998). Xin He and colleagues
expand the notion of law to cover ‘specific cultural conventions, logics, rituals, symbols, skills, practices, and processes that citizens routinely deploy in practical activity’ (p.707). They adopt such a broad, cultural conceptualisation to factor in the role of the state’s laws and regulations as well as other sets of norms and values that may also shape individuals’ legal consciousness. Seen through this lens, legal consciousness does not manifest exclusively within formal institutional boundaries but can be explored in any instance in which people articulate and evoke their ideals of justice and rights. In their conceptual framework, legal consciousness comprises two dimensions. The first dimension is a consciousness ‘of’ law, as expressed through legal knowledge, and the second is a consciousness ‘about’ law [original quotation marks], that is, a ‘cultural perception of justice’ (p.709).

He and colleagues argue that wage claimants’ consciousness about law, in particular the notion that one should be fairly paid for one’s work, explains why they engaged in disruptive actions, such as occupying government offices or threatening suicide to demand wage compensation. These claimants’ notion of fairness is something that is ‘deeply ingrained in the Chinese culture’ (He et al. 2013: 709) rather than drawn from the language of state law; the Labour Contract Law in this case. The tension between state law and a cultural precept of justice is highlighted in the authors’ recounting of a conversation between wage claimants and the government officials (p.720). In this conversation, claimants rebutted government officials’ question about the evidence of their employment (a question of legality), and evoked their own reasoning of what they perceived their labour to be worth.

The above study contributes to the existing literature on labour resistance in China in important ways. It draws attention to meanings and practices that exist outside of state law but crucially shape people’s views and pursuits of justice. Migrant workers’ subjective understandings help them determine what is fair and unfair in their relationship with the state and subcontractors, and in turn generate their resistance when the limit of injustice has been crossed. The lines of argument here bear resemblance to James Scott’s findings on peasants’ views of what is fair or exploitative in their relationship with the state and landlords. It also adds a new explanation to the existing analyses of legal institutions, which suggest that Chinese workers’ street actions stem from their being discouraged or disoriented by complex
legal procedures and weak implementation. In this case, workers’ street actions are a result of their aspirations for justice not embodied or actualised in legal institutions and practices.

There are still some gaps in Xin He and colleagues’ analysis that my study seeks to address. First, they treat state laws and cultural norms as separate and independent throughout the analysis. Such a binary view neglects the likelihood that the design of state laws has been influenced by cultural norms, and the possibility that laws and cultural norms can intertwine with one another in shaping individuals’ articulations and ideals of justice. Second, their analysis over-simplifies what they term the ‘cultural precept of justice’ as entitlement to fair pay for one’s work. The data obtained by these authors reveal other interesting details that have not been analytically addressed, such as workers’ regard of the government as omnipotent, or why most of them tended to take disruptive actions in desperate situations. This gap, in my view, is due to their sole focus on workers’ wage demands and an oversight of other concerns that might have shaped workers’ expectations about the role of government and the conduct of stakeholders involved in the construction industry. Lastly, the study is lacking in empirical evidence about aggrieved workers’ working knowledge of the law, an issue that forms part of its analytical focus on legal consciousness (He et al. 2013: 709). In order to fully understand the relationship between official law and cultural norms of justice from the workers’ perspectives, it is essential to empirically bring in the extent and nature of workers’ legal knowledge.

**Research question and analytical framework**

In order to answer the question posed above, ‘How does labour law contribute to labour resistance in Vietnam?’ this thesis focuses on the values and perceptions underpinning workers’ resistance, as expressed in interviews and verbal and written accounts. It addresses the following sub-questions:

- To what extent and how do workers draw on labour law to make sense of their relationship with management, the state and unions, and of their workplace problems?

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8 I use the broader term stakeholders here because as He and colleagues describe, the subcontracting and multi-tiered nature of work in the construction sector makes it hard to establish formal employment relations based on the law. Construction workers are mostly recruited by a broker based on rural networks and are given verbal information and promises about their jobs and payment.
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?

To answer the above questions, this thesis adopts a socio-legal approach, which views law as multi-faceted and extends the examination of law beyond legal texts and formal law-making processes. Viewed through this lens, law operates within society rather than acting upon it; the power and meaning of law can at times manifest in situations that unfold outside the legal sphere.

Despite their common analytical position towards law, different socio-legal scholars have defined and explained law in different ways. Sally Merry (1990: 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: 732) outside formal institutional settings and what law means to ordinary people when they encounter or confront problems in everyday situations.

As can be seen in the explanation of my use of the shorthand term ‘labour law’ above, my understanding of law in this thesis draws on these scholars’ approaches. In considering how the Labour Code matters in workers’ resistance in Vietnam, I focus, first of all, on 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 introduced by the state to enhance implementation of the Code and associated policies and regulations. Second, I examine the
practices through which the Code and associated state policies and regulations are implemented (or not implemented) by officials, factory managers, and others. Last but not least, I consider the extent to which workers’ values and ideas about justice are shaped by and conform with, on the one hand, the language of the labour law regime and the values embedded in that language, and on the other hand, experiences and discourse that differ from those language and values.

My analysis is informed by two strands of socio-legal enquiry, concerned with how individuals perceive and act in response to grievances in their everyday lives; and 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 out of 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: 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 and other ‘interpretative frames’ (Marshall 2003: 659) to decide whether their experiences constitute sexual harassment. 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’ behavior.

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 took
inspiration from and expanded James Scott’s notion of ‘hidden transcripts’ (Scott 1990: 14), by investigating not just resistant acts and behaviour concealed from the public view, but also ‘the way in which people make sense of the law and legal institutions,’ that is, their legal consciousness (Ewick and Silbey 1992: 734), within those acts. 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). 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 imbued within social and cultural practice, Ewick and Silbey (1992: 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 variegated 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 of 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.

The main difference between my socio-legal approach to labour resistance and that taken by Mary Gallagher and Xin He et al., as discussed earlier in their China studies, is my attention to workers’ interpretations of their workplace experiences prior to their resistance. 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. Throughout the analysis, I also pay attention to different values that shape workers’ claims-making. In doing so I seek to enrich our understanding of the socio-cultural contexts in which law is used, by going beyond Gallagher’s focus on the formal processes of litigation and, in particular, expanding Xin He et al.’s ‘cultural precept of justice’ in the Vietnamese context.

In sum, my socio-legal approach to analysing labour law and labour resistance in Vietnam unpacks the ways in which workers construct their grievances and justify their claims, and how labour law plays out in those contexts. Using this analytical approach allows me to bring together different threads of understandings and ideas about law as discussed in previous studies inspired by the political economy, moral economy, and rightful resistance literature. This research also seeks to account for how law interacts with non- and extra-legal sets of norms and practices in shaping workers’ framings of workplace problems and ideals of justice.

**Methodology**

This research employs qualitative case-study analysis of documentary evidence and intensive fieldwork. My seven-month field research was 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. This province was selected for the provincial union’s reputation for and emphasis on promoting legal education to factory workers. The Legal Aid Centre (LAC), affiliated with the provincial Labour Federation, has been in operation for more than two decades and has become a model for legal aid activities in other industrial hubs. I also chose this province because it is an industrial hub with the highest incidence of strikes and labour disputes in Vietnam since the early wave of foreign investment. The number of strikes per year climbed steadily from 1995 to 2005, peaking at 185 in 2008, then dropping to 36 in 2014. In this province, I focused on three municipal areas: Biên Hòa, Nhơn Trạch and Trảng Bom. These have the largest numbers of enterprises in the province and have been fraught with strikes. 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.

I obtained most of my data by conducting semi-structured in-depth interviews, with factory workers being the largest participant group. I focused on migrant workers, who make up around 60 to 70 percent of factory workers in the province. For practical reasons, it was much easier to approach migrant workers, as they live in concentrated rental areas, compared to local workers, whose residence in their own homes makes them a much more dispersed group. A yet more substantial reason is that migrant workers’ financial burden of living away from home may influence the way they articulate their demands and grievances. I should note that my interest in migrant workers does not stem from the evidence that they have organised for collective actions through native-place networks, and 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.

I adopted a socio-legal approach in designing interview questions (Ewick and Silbey 1998), 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: 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.

Similar to Ewick and Silbey, I did not frame my interview questions around legal terms, such as ‘(collective) disputes (tranh chấp),’ 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 particularly 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’ (đánh 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 diminishing the data’s validity or risking harm to research participants.9

My research subjects, however, are 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’ (p.20). In contrast, this thesis focuses on the latter group. My interview questions therefore were more structured around workplace complaints and grievances, but I often asked in general terms and allowed respondents to talk freely or 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.

After obtaining the union’s strike records, I selected a few companies in each municipality that have been subjected to strikes. I first approached potential participants in Nhơn Trạch municipality by visiting workers’ rental areas on Sundays, thanks to the help of the local Youth Union. Even on Sundays, it was sometimes difficult to meet workers, since they were working overtime. A few pilot interviews allowed me to grasp a general sense of workers’ wages and working conditions, labour disputes in their companies, and their attitudes towards management and unions. Later interviewees were friends and relatives of core workers10 (công nhân nông cốt) who helped with the recruitment process but did not intervene during the interviews. There were in total 30 ordinary worker interviewees, ranging in age from about 25 years to about 55 years. They worked across six different companies belonging to the food, wood manufacturing, and footwear and garment industries. In the remainder of the thesis, the specialisation of each company will not be specified. Indeed, very limited

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9 My involvement in such strikes, if by chance discovered by the state’s civil security forces, might have caused trouble for the workers with whom I talked.

10 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.
information about each company will be disclosed, so as to protect the identity of research participants.

Only five of my ordinary worker interviewees were male. This is despite the fact that I did not intend to focus on female workers in designing my project. The first reason for the predominance of women is that four out of the six companies, in the footwear and garment industry, employed a majority of female workers. The second reason, which I only realised towards the end of my first field trip, is my gender. Some of my key informants assumed that, as a female, I would be more comfortable talking with females than males. When I first requested them to introduce potential interviewees in a certain company to me (without any gender specification), they came back to me with several female workers. It was not until later, when I made a further request and one informant asked me: ‘Are you okay interviewing male workers?’, that I realised my gender mattered in this process. At the same time, I found that female workers were more willing and at times more passionate about sharing their stories than men. In addition to providing answers to my questions, many digressed at length, enabling me to understand more about their working lives and how different issues and events contribute to shaping their attitudes and behaviour. When I compared male and female workers’ accounts, I found minor differences in the way they talked about their grievances. Female workers had more complaints than male (such as problems with company-provided meals and managerial attitudes), and the former mentioned their family and living expenses while the latter did not. I was unable to remedy the gender imbalance among my interviewees in the second field trip due to refusals from potential participants and the availability of my key informants. Indeed, I had also encountered refusals on the first field trip; all of them were because workers were hesitant (ngai) to talk about their workplace conditions to outsiders. I factor in gender difference in workers’ articulation of their problems in my analysis. Ultimately, the limitation in participant recruitment does not affect my response to the main research question.

At the start of interviews, I briefly spoke to participants about my project and obtained their oral consent. There is no paper trail that might expose their identity or evidence of their sharing information with me. Some workers had their names introduced to me through indirect contacts, but I did not ask for names of the others. All interviews with workers were conducted either at their rental units, workers’ social gathering place near their units, or cafés. I interviewed them mostly individually and sometimes in pairs or in groups of three to five.
Each interview lasted from half an hour to two hours.

Another important research participant group was the core workers who received legal training from an Oxfam-funded project. In brief, these workers are different from other workers in that they are knowledgeable about the Labour Code. I approached these workers through the lawyer from the Legal Aid Centre (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. I will explain these issues in more depth in Chapter 4.

I am aware that the way in which I approached my participants and how they perceived my role as a researcher influenced the information they were willing to share. Other factors such as workers’ position, the workload and discipline they experienced on the shop floor, their interactions with co-workers, supervisors and managers, and how they acted or did not act against injustice, all contributed to shaping our conversations and their voicing of their attitudes and feelings. I will include further notes on these methodological issues in the core chapters – Chapters 2 to 4 – so as to allow for a better appreciation of workers’ stories.

I also interviewed union officials in upper-level unions, labour mediators in the municipal labour bureaus, officials of the industrial zone authority, and the LAC lawyer, all of whom are key parties overseeing labour relations and settling labour disputes in the province. Contacts with them were made via initial contacts with and referrals by the provincial Labour Federation and the provincial and municipal People’s Committees. The aim in these interviews was to grasp a general sense of the official discourse on strikes and labour disputes, and how these actors perceive the link between law and labour resistance. My interview with the lawyer was additionally concerned with the role of legal aid activities and the LAC in assisting workers.
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, and after I had finished interviewing the workers. 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.

During the fieldwork, I also observed two strike settlement processes; three legal lessons at workers’ residential areas; four meetings of core workers’ groups, and three unions’ year-end conventions. My observations were aimed at grasping a sense of different participants’ behaviours and interactions. I did not intervene on these occasions or converse with participants.

Documentary sources for the thesis 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. These written accounts complement the verbal narratives by providing powerful testimonies of the way workers depict their experiences on the shop floor and articulate a sense of (in)justice. I analyse them by employing close reading and critical discourse analysis.

Other written sources used to supplement the main research include policy decisions and official guidelines relating to labour relations, labour disputes and strikes in the field site province.

**Chapter Outline**

The rest of the thesis is structured as follows: Chapter 1 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, as background to the research problem. Chapters 2 to 4 are dedicated to addressing the central research question and sub-questions through analysis of verbal and written accounts of three forms of workers’ resistance. Chapter 2 draws on interviews discussing workers’ strikes in
strike-subjected enterprises in Đồng Nai province, with an in-depth focus on a food processing company. The recurrence of strikes in the case study 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 account for the recurrence of strikes. But the main reason 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 3 examines workers’ collective complaint letters. I first look at letters lodged at the upper-level union offices in 2013 and 2014. I analyse workers’ accounts of their experiences on the shop floor and discuss the extent to which and how language and values embodied in the labour regime feature in their writings. The rest of this chapter discusses a grievance letter that makes the headlines, and complaint letters that see the involvement of the union’s Legal Aid Centre. 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 4 explores a third form of resistance – the actions of core workers. The empirical section of this chapter consists of three main parts. The first part touches on core workers’ legal aid activities and how they connect with ordinary workers. The second part is about their beliefs and attitudes towards the role of law and legal aid in workers’ actions against law-violating management. The third part, which is central to the chapter’s argument, delves into the stories of four core workers, who have played different roles in collective resistance at their own workplaces. Here, I will expand on two cases in which core workers have been involved in complaint writing and collective mobilisation. The aim is to grasp the dynamics of their legal consciousness through the course and resolution of their complaint behaviour.

The Conclusion conceptualises the link between labour law and workers’ experiences of and resistance to workplace injustice. It reflects upon mainstream debates about law, domination and resistance, and evaluates the possibilities for advancing workers’ rights in Vietnam.
CHAPTER 1: THE LABOUR LAW REGIME IN VIETNAM

This chapter provides background information about the labour law regime, needed for an understanding of the relationship between labour law and labour resistance in Vietnam. It first outlines the development and significance of the Vietnamese Labour Code in the regulation of industrial relations in Vietnam. Second, it discusses key aspects of the Labour Code that concern key workers’ rights and benefits, workplace relationships, and the types and resolution of labour disputes. The next section addresses the state’s approach towards law and labour regulation over the past few decades, taking the example of strike settlement and strike prevention in the field site of Đồng Nai province. The last section outlines the development of legal aid by the Vietnam General Confederation of Labour (VGCL) and its objectives in relation to workers’ rights protection.

The Vietnamese Labour Code

The introduction of the Labour Code in Vietnam sits within the broader context of the state’s passage of new laws that are compatible with and aimed at furthering the development of a market economy. Following market-oriented economic reforms known as đổi mới (renovation), the Communist Party introduced the ‘law-based State’ doctrine which emphasises the role of ‘stable, authoritative and compulsory law’ (Gillespie 2007: 845) in governing modern industrial society. Post-reform legal institutions serve to replace the pre-reform socialist ideal of moral rules grounded in the Party’s mandates and policies, and confers on state officials a ‘management tool’ to balance social relationships (Gillespie 2007, Gillespie 2011: 248). The new labour legislation adheres to the state’s rhetoric of ruling society by law and lays the ground for regulating labour relations according to market principles.

The Vietnamese Labour Code was first passed in 1994 and most recently amended in 2012. The enactment of the Code marks a shift from the pre-reform socialist labour regime, wherein management and workers were state employees and were assumed by the state to have no conflicting interests, to a market labour regime understood as involving differences and potentially conflicts between the interests of employees and management (Do, C. 2011). The Labour Code establishes a contractual labour regime, and designates rights and obligations of employers and employees upon entering a contractual relationship. The Code also lays the
ground for new practices in labour relations, such as the tripartite negotiation of minimum wages at the national level and collective bargaining between employers and employees in workplaces. In so doing, it sets out a new role for the VGCL and its affiliated bodies to represent employees in bargaining with management and ensure the enforcement of their lawful rights and interests.

The Drafting Committee of the 1994 Labour Code included officials from the Ministry of Labour, Invalids and Social Affairs (MOLISA), the Minister of Justice, and the VGCL. Employer representatives were not involved in the drafting process and were a weak voice during consultation. The marginal role of employer representatives at the time can be explained by the immaturity of business associations and the non-existence of the tripartite mechanism in labour-related decision-making (Do, H. 2016). With the development of the private sector and their associational power, the Vietnam Chamber of Commerce and Industry (VCCI), as business representative, became part of the drafting committee of the 2006 amendment law (Do, H. 2016).

The drafting process also involved consultation with the International Labour Organization (ILO) and resulted in the ratification of 12 ILO conventions. The ratified conventions concern minimum age of work, night work, underground work for women, weekly rest, labour inspection, and occupational health and safety (ILO 2016). Conventions in relation to freedom of association, collective bargaining, discrimination, child labour, social security, wages and conditions of work were not ratified (ILO 2016). However, as will be indicated below, concepts and principles from some of these conventions were adopted in clauses of the Labour Code such as those on collective bargaining (thương lượng tập thể) or the requirement that minimum wage must satisfy employees’ and their families’ living needs.

Basic principles

Articles 4 to 8 of the Labour Code set out key objectives of the state with regard to labour relations, the rights and obligations of employers and employees, and prohibited acts in labour relations. Some of the state’s objectives are: (1) to guarantee ‘legitimate rights and interests’ (quyền và lợi ích chính đáng) of employers and encourage agreements providing them with more favourable conditions than those compulsory in the law; (2) to guarantee the rights and interests of employers, and democratic, fair and civilised labour management in accordance with labour laws; (3) to guide employees and employers to have dialogue and
bargain collectively to develop harmonious, stable and advanced labour relations; and (4) to ensure gender equality and stipulate policies to protect female workers. Following these objectives, prohibited acts on the employers’ part include discrimination on the basis of gender, race, or marital status; discrimination on the basis of establishing or joining trade union activities; maltreatment or sexual harassment of a worker; extraction of forced labour; and false promises or false advertisement.

Employees are entitled to the following rights: (1) to work and freely choose their work and occupation; (2) to receive a wage commensurate with the skills and knowledge agreed with the employer, and other welfare benefits; (3) to work in a safe and healthy environment; (4) to unilaterally terminate the employment contract in accordance with labour law; (5) to request and participate in dialogue with the employer, and implement regulations on democracy and consultation in the workplace to protect their lawful rights and interests; (6) to establish and join a trade union, and participate in trade union activities; and (7) to strike. The first four categories apply to individual employees, while the remaining three indicate a collective right. There are, however, institutional and legal constraints upon the latter collective rights, especially the right to strike, to be discussed later. In return, employees are obliged to abide by employment contracts, comply with labour discipline rules and regulations, follow lawful orders of the management, and comply with regulations on social and health insurance.

Labour contracts
There are three types of employment contract, based on the duration of employment: An indefinite term contract, a definite term contract for the duration of 12 to 36 months, and a contract for seasonal work or a specific task with a duration of less than 12 months (Article 22). The terms and conditions within a labour contract are established on the basis of employer and employee negotiation, and existing wages and workplace regulations. Article 22 also specifies conditions under which short-term contracts shall be renewed and ensures employees’ entitlement to permanent employment. In particular:

When an employment contract expires and the employee continues to work, during a period of 30 days from the date of expiry of the contract, the two parties must sign a new employment contract. If no new contract is entered into, the definite term contract shall become an indefinite term one, and the seasonal contract shall become a definite term one within a period of 24 months.
Where the two parties conclude a new contract with a definite term, it shall be the one and only additional definite term employment contract to be signed; after that, if the employee continues to work, an indefinite term contract shall be signed.

Both employers and employees have the right to unilaterally terminate labour contracts under specified circumstances and provided that they give notice to the other parties within a given timeframe (Article 37-38). Employers must not unilaterally terminate a contract when an employee is being treated for illness and accidents, or is on annual leave or other leave permitted by the employer, or when a female employee is pregnant, getting married, on maternity leave, or nursing small children.

**Wages**

Chapter VI of the Labour Code defines a wage as an amount of money paid to an employee to perform work as agreed by an employer and employee, according to the nature of the work or position. The employer must ensure that an employee’s wage is not lower than the government’s minimum wage; and the wage shall be paid based on labour productivity, the quality of work performed, and on the basis of gender equality. The minimum wage is ‘the lowest payment for an employee who performs the simplest work in normal working conditions and must ensure the minimum living needs of the employee and his/her family’ (Article 91). Although the Vietnamese government has not ratified the ILO’s minimum wage convention, it has incorporated the convention’s key feature, the guarantee of employees’ livelihoods, into the Labour Code.

Despite the stipulation of the minimum wage in the earliest 1994 version, substantial debates on it did not start until the peak of foreign investment and labour tensions in Vietnam in 2005. Factory workers across industrial regions, especially in foreign direct investment (FDI) sectors, went on numerous strikes to protest against the state’s failure to adjust the minimum wage from 1999 to 2005 (Trần 2013: 197). Adding to such failure was weak economic management, which led to a two-digit inflation rate after 2007. Following the strikes, the state put in place annual adjustments of the minimum wage, which is also the legal wage that domestic private and FDI enterprises are obliged to pay employees. The annual minimum wage rise was introduced in 2007 and formalised nationally in 2013 with the establishment of the National Wage Council.
The minimum wage varies across four different regions. Each of the four regions includes different provinces, cities and lower-level municipalities, classified mainly according to their average living costs. The minimum wage in 2015 for region I, which is the highest of all the four regions, is 3.1 million dong (around 142.2 US dollars) a month, an increase from 2.7 million dong (around 123.8 US dollars) in 2014 (Government of Vietnam 2014). Key urban and industrial areas in my field site, Đồng Nai province (including Biên Hòa, Nhon Trạch, Vĩnh Cửu, Trảng Bom and Long Thành), have a region I minimum wage rate, while the remaining rural areas have region II and III rates (Government of Vietnam 2014). In practice, according to VGCL surveys in 2013 and 2014, the minimum wage can satisfy only 70 to 80 percent of the minimum living needs of workers in industrial areas, which falls far short of the above article on livelihood assurance (Lao Động 31/7/2014).

Apart from the obligation to pay workers the legal wage, the Labour Code stipulates that a company must also develop the wage scale and wage table to be used for wage negotiations on entering into labour contracts and wage payment. The wage scale and wage table must (1) result from the employer’s consultation with the workers’ representatives; (2) be made available to employees; and (3) be registered with the local labour bureau or relevant authority of industrial zones where the enterprise’s office is located (Article 93).

The most recent guidelines for designing wage tables are issued in the Government Decree 49/2013. Briefly, the table consists of varying wage levels for employees, from technicians and supervisors to workers on the shop floor. The aim is to encourage employees to improve their skills or work capacity and reward them accordingly (Government of Vietnam 2013). The difference between two consecutive wage levels must be at least 5 percent (Government of Vietnam 2013). The wage table, as defined in the Labour Code, is a table of varying wage levels for employees, from technicians and supervisors to workers on the shop floor. A company must register its wage table with the local labour bureau or relevant authority of industrial zones as the basis for wage payment and adjustments (Government of Vietnam 2013). The wage table is to ensure fairness in the company’s wage rise, with senior workers deserving to be paid a higher rate than junior workers and newcomers. In addition, work that requires skill training, including training provided by the employer, must be paid with a wage at least 7 percent higher than the national minimum wage. Work undertaken in hazardous
and poisonous environments must be paid for at a rate at least 5 percent higher than the national minimum.

The basic wage, which must be equal to or above the minimum wage, is the standard against which contributions to social, medical and unemployment insurance are calculated. The actual wage, normally paid monthly, depends on the company’s form of payment; whether by the hour, piece rate or task completion. The piece rate is calculated according to an employee’s quantity and quality of production, while task payment is based on quality and the completion of the allocated workload in a certain time.

**Other benefits and entitlements**

Employees’ extra benefits, as well as other issues related to working conditions, shall be determined through workplace dialogue and collective bargaining between employees, employees’ representatives and employers. A collective bargaining agreement is then established, which ‘must not be against the law and must provide for terms and conditions for workers which are more favourable than those provided by law’ (Article 73). An enterprise-level collective bargaining agreement can have a duration of one to three years, and must be submitted to the labour management authority at the city or provincial level. The collective bargaining agreement is obligatory by law and its enforcement shall be monitored by parties in the employment relationship. Besides this agreement, other forms of financial aid and bonuses shall be determined on the basis of business profits and employees’ work performance, as a result of employers’ consultation with employees’ representatives (Article 102).

**Working hours and overtime**

Article 104 stipulates that normal working hours shall not exceed eight hours per day or 48 hours per week. An employee who works consecutively for eight hours shall be given a rest break of at least 30 minutes, which shall be included in the working hours, and at least 45 minutes break for night-time work. According to Article 110, an employee is further entitled to periods of leave of at least 24 consecutive hours. The employer is responsible for ensuring that on average the employee has at least four leave days per month.

The number of overtime working hours of an employee shall not exceed 50 percent of the normal working hours in one day, 30 hours a month and 200 hours a year (except for special
cases regulated by the Government, 300 hours a year) (Article 106). In regard to the overtime rate, the Labour Code specifies:

An employee who performs overtime work shall be paid a wage calculated based on wage unit for piece work or piece rate, or the wage of his/her current work as follows:

- On regular days, at least equal to 150%
- On the weekly day off, at least equal to 200%
- On public holidays and paid leave days, at least 300% (Article 97)

Additional guidelines on premium overtime rates are also given for employees performing night work and overtime night work (Article 97). The Code also stipulates that employee’s consent must be obtained for overtime work.

There are also provisions for rest time during working hours and between shifts, weekly breaks, and annual leave. Employees are entitled to a paid leave of six public holidays.

**Labour discipline regulations**

Chapter VIII of the Labour Code outlines employers’ and employee’s obligations with regard to workplace discipline. An employer with at least 10 employees is required to have workplace regulations in writing, which must not be contrary to the Labour Code and relevant legal provisions. Similar to other work-related documents, workplace discipline must result from the employers’ consultation with the employees’ representative, must be registered with the labour authority, and must be displayed within the enterprise. In short, an employer can impose disciplinary measures on employees who are deemed to breach workplace regulations with regard to production, business assets and equipment, provided that the employer demonstrates evidence about the employee’s mistake and an employee is entitled to defend his/her behaviour in the settlement of disciplinary measures (Article 123).

Discipline can take the form of reprimanding, deferment of wage increase for a maximum of six months, demotion, or dismissal. Article 126 specifies that dismissal may be imposed when an employee commits an act of theft, embezzlement or takes illicit drugs; causes threats to the assets or interests of the employer; or has been absent from work for five accumulated days in one month or 20 accumulated days in one year without legitimate reason. There are circumstances in which an employee is exempt from disciplinary measures, including when he/she is on leave due to illness and other types of leave, with the employer’s consent in
advance. A female employee who is pregnant, on maternity leave, or breast-feeding children under 12 months old is also exempt from discipline.

**Separate provisions for female workers**

The main purpose of having separate provisions for female workers, as stated at the beginning of Chapter X, is to promote gender equality in the workplace. These provisions take into account female workers’ wellbeing and their child bearing and child rearing duties. Employers therefore are obliged to implement workplace policies and provide female employees with flexible working arrangements to fulfil these objectives.

Separate provisions for female employees include maternity leave, rest time, and measures to protect the wellbeing of pregnant employees. Female employees in general are entitled to an extra 30 minutes break during their menstruation period. Female employees who are in the later stage of their pregnancy or are nursing a child under 12 months of age shall not be required to do night work or overtime; may be transferred to lighter tasks, or have their daily working hours reduced by one hour while receiving the full wage; and are exempt from any labour disciplinary measures. They can take maternity leave for up to six months and receive 100 percent of the average wage for the full six months (Article 157). Further details of maternity benefits are provided in the Law on Social Insurance.

**The resolution of labour disputes**

There are separate provisions for the resolution of individual and collective labour disputes, and for different types of collective disputes. Dispute resolution shall involve the representative of each party, and shall be initiated through direct negotiation by the two parties. When one of the parties refuses to negotiate, the negotiation is unsuccessful or the agreement reached is reneged by one party, the other party can request a resolution by an authoritative agency or individual.

A notable feature of formal labour dispute mechanisms in Vietnam is the distinction between rights-based and interests-based collective disputes. A collective labour dispute over ‘rights’ (quyề n) is a dispute between a workers’ collective and the employer arising out of different interpretation and implementation of labour laws, collective bargaining agreements, internal work regulations, and other lawful regulations and agreements (Article 3). This type of dispute shall firstly be resolved by the labour mediator, who works in the labour bureau or
labour management authority at the district levels. In case mediation fails or a successful mediation is not enforced, a disputing party can request a resolution by the People’s Committee at the district level, and finally, the People’s Court. A collective labour dispute about ‘interests’ (loi icht) is a dispute arising out of the request of the worker’s collective for the establishment of new working conditions different or additional to those set out in labour laws and other lawful regulations and agreements (Article 3). It shall also go through a similar stage of mediation, before being resolved through the Labour Arbitration Council, established at the provincial level and made up of representatives from the state’s labour authority, unions, and employers’ organisations.

As mentioned above, Vietnamese employees have the right to strike, subject to stipulated conditions. A strike is ‘a temporary, voluntary and organised stoppage of work by the worker’s collective in order to achieve demands in the process of labour dispute resolution’ (Article 209). Before the 2012 amendment to the Labour Code, employees could legally go on strike following both rights- and interests-based disputes. However, with the 2012 amendment, a strike must stem from an interest-based collective labour dispute, following a failed or unenforced arbitration outcome by the Labour Arbitration Council. A strike must be organised by the company union or the upper-level union in places where the company union has not been established. A decision to go on strike must receive approval from at least 50 percent of employees whose opinions are solicited, and details and plans about the strike shall be notified to the employer and the provincial-level union and labour authority. Strikes that violate the legal procedure shall be resolved on an ad hoc basis by the labour authority, unions and relevant state agencies at the district levels. The next section will touch on this ad hoc measure and discuss the state’s ambivalent approach towards law and labour relations.

**Alternative measures of labour dispute resolution**

As the formal system of dispute resolution is complex and non-functioning, the government and union have put in place two alternative avenues. The first avenue is undertaken by the Labour Inspectorate, which belongs to the Department of Labour, Invalids and Social Affairs at the city/provincial levels. Decree 119/2014/ND-CP in 2014 gives details on two types of complaints accepted in this avenue, which are ‘complaining’ and ‘denunciation.’
'Complaining’ is defined as ‘an act in which an employee,\textsuperscript{11} intern, apprentice, following the procedures outlined in this Decree, request the person in charge of resolving complaints on labour to re-consider the employer’s decisions or conduct when he/she judges that those decisions and conduct contravene labour laws and violate their lawful rights and interests’ (Government of Vietnam 2014). As the first step, an employee must direct their complaints to his/her employer, who has a maximum of 30 days to resolve them. If the resolution is not satisfactory or the time limit has passed, an employee can bring their complaints to the chief labour inspector and expect the resolution within 45 days.

Denunciation is defined as ‘an act in which employees […] report to the authority about legal violations by individuals, organisations and agencies […] that bring harm to, or threaten to harm the State’s interests, or lawful rights and interests of citizens or other organisations’ (Government of Vietnam 2014). The chief labour inspector shall investigate and resolve the denunciation within 60 days. The resolutions of complaints and denunciations are legally enforceable.

The second avenue for workers and employees to send their complaints is the provincial and upper-level unions. The Examination Committee of the unions is charged with receiving and processing complaints. I will provide further detail about the process of complaint handling in Chapter 3. Compared to the first administrative avenue, an employee opting to take this path is not required to first direct their complaints to an employer, and can expect the resolution within 10 days.

The state’s approach to labour law and labour relations: the case of strike settlement and strike prevention measures

The preamble to the 1994 version of the Labour Code highlights the state’s objective of developing ‘harmonious and stable labour relations’ that contribute to the modernisation and industrialisation agenda. The development and strengthening of the labour law regime were aimed at serving this objective, with the state now acting as a regulator and mediator of labour-management relationships.

\textsuperscript{11} The Decree uses the term ‘employee’ in a broad sense; it does not make specific mention of ‘the collective of employees’ or whether it shall apply to individual and/or collective types of complaints.
The transition to a market-based labour regime, following the late 1980s’ economic reform, has caught the state in a paradoxical position regarding its stance on labour issues. On the one hand, it continues to hail the working class as the vanguard of revolution and the path to socialism; on the other, it also highlights the importance of attracting foreign investment to gear up industrial development (Central Committee of the Communist Party of Vietnam 2008; Nicholson 2002). This paradoxical position has posed a dilemma for the state and VGCL when it comes to the mediation and management of labour disputes.

The escalation of collective labour disputes, mostly in the form of factory strikes, has highlighted this dilemma and posed a particular political challenge, given the state’s concern with stability. The number of strikes nationwide amounted to 5,000 from 1995 – the year when the Labour Code took effect – until 2012 (Lao Động 26/7/2013). On the one hand, labour disputes put pressure on the state and VGCL to stand by workers, whom they claim to represent; on the other, they also affect the positive image of the state towards current and potential foreign investors, whose capital has been crucial to the country’s economic progress. State authorities have put the blame on foreign investors and managers for failing to comply with labour laws, which in turn implies that workers’ demands are lawful and legitimate (Siu and Chan 2015). However, at the same time, the state also rules all strikes illegal simply because they go against the procedures for resolving collective labour disputes. The rhetorical approach of the state towards legal compliance and labour disputes exemplifies the dilemma it has faced in sustaining its relationship and image with workers and managers for the past two decades.

The state’s approach to law and labour relations is most recently expressed in Directive 22 (The Central Committee of the Communist Party of Vietnam 2008), which also mandates the practices of the VGCL and local authorities in charge of labour issues. The Directive first acknowledges the ongoing problem of collective labour disputes, which contravene legal procedures and in turn affect social order and industrial activities. At the same time, it suggests that the major causes of labour disputes are employers’ limited enforcement of the Labour Code and their lack of commitment to employees’ lawful rights and interests. The Directive thus demands that different state bodies enhance the implementation of labour law in businesses and, in particular, that unions increase workers’ legal understanding.
It further promotes existing practices outside the scope of the Labour Code that (mainly) serve the goal of sustaining growth and stability. One of those practices is the ad hoc measure of strike settlement established at the city or province level. This local approach to settling strikes emerged in the mid-1990s in key industrial provinces and cities and has been deemed effective by local governments as a way of fire-fighting strikes and promptly restoring stability (Do, C. 2011). From the state’s perspective, strike settlement and strike prevention measures complement the existing system of law enforcement, including labour inspection, and can be substituted for the formal mechanism of labour dispute resolution. The Directive’s guidelines around strike settlement and prevention still incorporate terms and regulations set out in the Labour Code, in order to ensure that the behaviour of company management and workers accords with legal guidelines. The resolution of strikes therefore becomes an avenue for the unions and labour authorities to communicate the Labour Code to employment parties and foster their understanding in the interest of harmony and industrial stability.

Đồng Nai Province provides a good example of this practice. As a pioneer of the wave of industrialisation and foreign investment in the south, this province is also among the top regions witnessing a record number of collective labour disputes. Prior to 2008, the main responsibility for settling strikes rested with labour mediators from the Department of Labour in coordination with relevant unions and authorities. After 2008, as labour mediators were overloaded with the escalating number and complexity of strikes, this responsibility was shifted to sub-provincial municipal/city governments (Interview with a labour official, 18/12/2014). In 2009, the People’s Committee issued decision 22/QD-UBND, which established a collaborative scheme to resolve labour disputes. The decision indicated clearly that it targeted disputes that do not comply with the formal procedures designated in the Labour Code and effectively includes strikes and work stoppages. The rationale for this decision reflects the limitations of the mechanism set out in the Code and the need to preserve stability. As stated in a report by the Department of Labour, Invalids, and Social Affairs (DOLISA) (2011), the mechanism which separates disputes on rights from disputes on interests ‘has failed to reflect social realities, making it difficult for responsible stakeholders to execute their functions’. In addition, ‘the time limit for resolving disputes, which is five days for disputes on rights, and seven days for disputes on interests, causes delays,’ and affects the recovery to normal production activities (DOLISA 2011).
Following the provincial decision 22/QD-UBND, strike action teams were established at the municipal/city level, headed by the Chair of the People’s Committee at this level. Strike action teams include upper-level unions, officials from the Industrial Zone Authority (IZA) and mediators of the labour bureau within the administrative area. In reality, the Chair of the People’s Committee usually delegates his/her role to an upper-level union official, who takes the lead in the bargaining process. The engagement of labour mediators and IZA officials in strike settlement varies among lower-level cities and municipalities, depending on bureaucratic arrangements. For instance, the labour mediator and the upper-level unions share equal responsibilities in Trảng Bom municipality; in other places, the former mainly work as note-takers during the resolution meeting. Such variation does not affect the working principles of the action teams in these places.

When coming to the strike scene, the action team first gathers workers together and solicits their reasons for striking. The action team then can opt for either of two approaches: having a closed meeting with management without the workers’ presence; or requesting management and workers to have a dialogue, with the strike action team in attendance, in the company yard or kitchen area. Most of the time, state security officers also make their presence known to ensure that there is no disturbance, damage or violence, rather than to suppress the striking workers.

Regarding the first approach, after receiving a list of workers’ problems and demands, the action team brings them to a closed meeting with management, classifying them into rights and interests. Regardless of whether workers explicitly draw on legal principles in making their demands, strike settlers examine and find a resolution to them based on labour law and policy. With regard to rights, the management is asked to review their conduct and policies in accordance with state law and policy. With regard to interests, the team will bargain with management on behalf of workers, bearing in mind the company’s rate of production, its loss or profits. If necessary, the action team will ask a small group of workers’ representatives to join the meeting. These are often leaders of production teams or assembly lines. If required, these people can convey resolutions to the rest of the workers as soon as an outcome from the meeting has been reached, in order to quickly calm the crowd. Management is required to issue a final announcement to workers at the end of the bargaining process (Interviews with members of strike action teams in Đồng Nai province, December 2014 & January 2015).
In the second approach, the action team can ask workers and management whether they would like to hold a direct dialogue, which normally takes place in the kitchen area or in a wide yard. Interviewed officials referred to government Decree 60/2013/ND-CP as the recent policy guideline for this dialogical practice and considered themselves as mediators and facilitators of the conversations. The action team can then explain and give advice about legal and policy issues, the main purpose being to enhance mutual understanding between the two sides, which in turn helps reduce the occurrences of labour disputes. Decree 60 also stipulates how often and how communication should take place between employers and employees, and aims to promote a form of grassroots democracy in the enterprises (Government of Vietnam 2013).

Promoting legality in labour relations seems to be the main principle of strike settlement. For instance, one union official said:

> We explain to workers about the legal regulations, company regulations, and collective agreements. We offer our opinions and analyse what is right or wrong in order for the two sides [workers and employers] to compromise bit by bit and reach a consensus (Biên Hòa 23/12/2014).

During our conversations, labour mediators and IZA officials frequently mentioned the law and referred to the legality of disputing parties’ actions. They considered legal compliance as an end and focused on persuading management to change company policies in accordance with labour laws. While these officials tended to work more with management, union officials that I interviewed often claimed to take the lead in dealing with workers, such as explaining what counts as lawful demands and actions, and mobilising them to get back to work.

Officials in the strike action team also make use of other persuasive tactics to put an end to strikes. In his recent PhD thesis, Ha Do found that local strike action teams in the south have taken an approach similar to the party campaign of ‘mass mobilisation,’ as expressed through ‘soft’ measures such as verbally mobilising (vận động) and persuading (thuyết phục) workers to get back to work (Do, H. 2016: 219). The action teams also seek to promote empathy and understanding between management and workers to mediate their conflicts, instead of issuing administrative fines on law-violating businesses or suppressing workers. Soft measures were also found in my conversations with officials of the strike action teams.
recalling their experiences in strike settlement, they mentioned such things as ‘[asking workers to] share the difficulties with the company’ or ‘[asking management to] consider giving more to senior workers for their long-term bonding’. It is thus evident that strike settlement measures are a combination of law-based and extra-legal verbal tactics by the state and unions, designed to ease workplace tensions. Whether these measures are effective in promoting legal compliance and enhancing the image of the state in the eyes of workers and management will be further examined in Chapter 2.

Besides strike settlement, the province has also put in place strike prevention measures since 2009 to monitor businesses’ compliance with labour laws. In this province, these measures can be broken down into two main tasks: advising business of the need for an annual wage adjustment and year-end bonus payment, and coordinating with management and company unions to resolve early signs of unrest. The unions and authorities are aware of the sensitivity of the January–February period before the Lunar New Year holidays, when a large number of strikes occurs. Following the national government’s annual wage rise, which normally takes effect at the start of the year, workers are inclined to expect some sort of announcement from the company on its new wage policy, together with the year-end bonus. With this in mind, the provincial labour federation, upper-level unions and municipal labour bureaus have coordinated to visit businesses at this time of year, to remind them of these matters. Particular attention is paid to businesses that are prone to labour disputes. One union official said about the task:

> If the enterprises have not made wage adjustments following the government’s minimum wage decision, nor decided on the year-end bonus, our team reminds them to do so as soon as possible and gives them a ‘due’ date. We then request them to report these matters, once decided on, to upper-level unions and relevant state bodies (Trảng Bom 14/1/2015).

I consider these strike settlement and strike prevention measures as forms of ‘regulatory conversations,’ defined as ‘forms of interpersonal communications’ between the regulators and regulated, which take place ‘in formal and informal settings’ (Black 2002: 170-171). Strike settlement and prevention functions as a quasi-regulatory practice, whereby the state and union officials, in attempting to broker an agreement, seek to influence the behaviours of disputing parties in line with state laws and policies. These measures allow state authorities and union officials to mould the behaviour of management and workers, without resorting to
stringent legal measures that might damage the state’s image in the eyes of both employment parties.

**The union’s legal aid activities**

Following the state’s emphasis on promoting legal compliance in labour relations, the VGCL has taken steps to formalise and enhance the union’s legal aid activities. The VGCL issued its first guidelines for legal aid activities in 2004, the objectives of which are to guarantee the legal and legitimate rights and interests of union members and employees, and contribute to enhancing their legal understanding and awareness of the need for legal compliance (Decision 785/2004/QD-TLD). The unions at different levels can either establish legal aid centres, offices or groups to carry out their legal aid activities, which shall focus on labour and union laws. In addition, the centres can expand the scope of their activities by providing and charging for legal services in other civil, criminal and administrative areas. Throughout their operations, legal aid agencies have the right to request relevant authorities to provide information related to issues being consulted about. They can suggest that unions request the authorities to resolve issues related to the rights and interests of union members and employees. In reality, Legal Aid Centres (LACs) of provincial-level unions in key industrial areas had been in operation well before the VGCL’s decision. For example, LACs in Hồ Chí Minh City and Đồng Nai Province were established in the early 1990s. Recent improvements in legal aid activities have followed the Prime Minister’s Decision 31/2009/QĐ-TTg to approve a plan to promulgate and promote laws to employees and employers in the period 2009–2012.

The VGCL decision also specifies the rights and obligations of legal aid recipients. In particular, they have the right to: (1) request legal aid, or delegate such a request to other people; (2) be informed about the outcomes of consultation; (3) have the contents of legal advice or consultation kept confidential at their request; and (4) make complaints and denunciations regarding legal advisers’ behaviour. For their part, recipients are responsible for: (1) proving that they are eligible for legal aid by providing essential identification; (2) providing sufficient and correct information or documentation; and (3) following the rules and regulations of the legal aid organisations.
As summed up in the VGCL’s Decree 4/NQ-TLD in 2010, there were at that time 47 legal aid centres and offices, and 569 legal aid groups in operation across Vietnam. The 2010 Decree reiterates the significance of legal aid ‘as a way to allow trade unions to carry out their functions of representing and protecting the lawful rights and interests of employees.’ Further targets and objectives were issued and revamped in 2014, focusing on legal aid at non-state enterprises. Decree 4b/NQ-TLD of 2014 highlights the need for greater cooperation between different levels of the trade union in carrying out legal education and mobilisation. Importantly, it also highlights the longer-term impact of legal aid in providing employees and workers an opportunity to ‘do research and learn about laws themselves, and protect their own lawful rights and interests.’

This background chapter has outlined core aspects of Vietnam’s labour law regime, including key provisions of the Labour Code, state policy approaches and measures aimed at supplementing the Code and enhancing labour relations, including an example of strike settlement measures in the case study province, and legal aid activities for workers. The next substantial chapters on workers’ narratives will critically reflect upon these aspects of law and their implications for workers’ pursuit of justice and acts of resistance.
CHAPTER 2: FACTORY STRIKES

Introduction

This chapter examines how labour law shapes factory strikes. It draws mainly from interviews with workers in strike-affected companies in Đồng Nai province, and includes an in-depth discussion of one company case study. Going on strike is so far the most common form of resistance taken by Vietnamese workers. Almost all strikes in Vietnam today contravene procedures outlined in the Labour Code, as they do not strictly stem from disputes about ‘interests’ (loại ích) as opposed to ‘rights’ (quyền), occur without union leadership, and bypass the process of mediation and arbitration. For these reasons, the state and unions in Vietnam have deemed all strikes illegal; at the same time attributing the reasons for strikes to businesses’ violation of labour law (Siu and Chan 2014; Trần 2013).

While the form of strikes has remained unchanged over the past two decades, their causes have shifted from workers’ demands for rights to demands for interests since 2006 (Clarke, Lee and Do 2007). In its recent report, the Vietnam General Confederation of Labour (VGCL) observes that, from 2010 to 2014, strikes mainly stemmed from collective disputes based on interests or on both rights and interests, while strikes before 2009 occurred due to businesses’ violations of labour law (VGCL 2015). The number of strikes has substantially declined from its peak at 993 in 2011 to 293 in 2014.

Existing works on labour resistance in Vietnam show that factory workers have employed their understanding of the Labour Code to mobilise fellow workers and justify their demands in strike actions (Kerkvliet 2011, Trần 2013, Siu and Chan 2015). For example, Trần writes about how, in a well-known strike of workers in Hue Phong Leather Shoe Factory in 2006, two female workers coordinated with each other and mobilised their fellows both inside and outside the factory (Trần 2013: 240). These women took advantage of their knowledge of the Labour Code, and their social and productive networks, to pressure management to comply with the minimum wage and social insurance scheme. This well-known case study suggests that despite the complicated legal process that deters workers from taking legal actions, the Labour Code sets out legal entitlements which workers draw on in their collective actions against management’s conduct (Kerkvliet 2011, Trần 2013). Further evidence can also be found in Vietnam’s main labour newspaper, Lao Động, in their coverage of strikes which
broke out from workers’ wish to ‘demand their rights and interests’ (đòi quyền lợi) (Lao Đồng, 2011-2014).

There are two limitations in existing studies of Vietnamese workers’ strikes, with respect to their approach to and analysis of labour law. First, they focus on workers’ language as seemingly drawn from the Labour Code but do not investigate in detail workers’ perceptions of the Code and labour law more generally. Second, as they are mainly concerned with the causal processes leading to strikes, existing studies only take labour law into consideration when legal language and institutions are explicitly deployed in strikes. Their analyses risk overlooking instances when values, meanings and practices derived from the Labour Code underpin strike actions but do not clearly manifest in workers’ language and actions. My discussion of strikes goes beyond the instrumental view of the Labour Code and explores how varying aspects of labour law more broadly contribute to striking workers’ motivations and framing of their demands and actions.

The rest of this chapter is structured as follows. The first part outlines common causes of strikes in Đồng Nai province from 2010 to 2014, as obtained from policy documents and interviews with state and union officials. The second part investigates the grievances and demands of workers interviewed in 2014 and 2015 who had been involved in strikes in six selected companies in Đồng Nai province. All six selected companies are among 18 foreign-owned and private domestic companies in the province, which were affected by strikes at least twice in the period of 2010 to 2014. An in-depth case study of one of the companies also includes an interview with the human resource manager to understand how aspects of the labour law regime are used or abused at the company.

**Strikes in Đồng Nai Province, 2010-2014**

Local upper-level unions keep a good record of strikes taking place in the municipalities or industrial zones in which they are in charge. The tabulated annual reports contain information about the time and duration of strikes; workers’ demands; the industrial sector of the affected enterprises; the number of workers involved in the strikes; and their outcomes. The level of detail in reporting the cause and resolution of strikes varies across unions. In Nhơn Trạch, I was given a note, hand-written by the union chairwoman, which only includes very brief reasons for strikes, such as ‘wage’ and ‘bonus,’ and not the resolution. This note also includes
The union in charge of Biên Hòa’s industrial zones records more information about the causes and outcomes of strikes, including, for instance, the exact amount of wage rise or bonus demanded by workers. I obtained the most detail about strikes from the Tràng Bom union, as besides the union’s tabulated reports, I also obtained individual documents produced by the labour mediator on the unfolding of strikes and which actors and agencies were involved in strike settlement.

It is common for workers to raise several demands in a single strike. Single-demand strikes are often about wages or the year-end bonus. The following table summarises the number of workers’ demands counted from the reports. I group workers’ demands into the following main categories based on their frequency: wage, bonus, overtime, meal quality, managerial/supervisory treatment, and others.

<table>
<thead>
<tr>
<th></th>
<th>2010</th>
<th>2011</th>
<th>2012</th>
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<th>2014</th>
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<tr>
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<td>83</td>
<td>113</td>
<td>14</td>
<td>28</td>
<td>36</td>
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<tr>
<td>Bonus</td>
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<td>8</td>
<td>8</td>
<td>8</td>
<td>4</td>
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<tr>
<td>Overtime</td>
<td>11</td>
<td>7</td>
<td>5</td>
<td>2</td>
<td>2</td>
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<tr>
<td>Meal quality</td>
<td>18</td>
<td>14</td>
<td>5</td>
<td>2</td>
<td>2</td>
</tr>
<tr>
<td>Managerial/supervisory treatment</td>
<td>8</td>
<td>5</td>
<td>5</td>
<td>2</td>
<td>3</td>
</tr>
<tr>
<td>Others (such as workplace regulations, allowances, insurance benefits)</td>
<td>62</td>
<td>33</td>
<td>17</td>
<td>7</td>
<td>6</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>203</strong></td>
<td><strong>180</strong></td>
<td><strong>54</strong></td>
<td><strong>49</strong></td>
<td><strong>53</strong></td>
</tr>
</tbody>
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| **Total number of strikes** | 147 | 168 | 47 | 39 | 36 |

Table 1: Strike demands in Biên Hòa, Nhơn Trạch, Tràng Bom, 2010-2014 (The Union of Industrial Zones in Biên Hòa and Labour Federation of Nhơn Trạch, and Tràng Bom)

As mentioned in Chapter 1, the period from late December to February is considered ‘sensitive’ (nhạy cảm) since workers expect a wage rise following the government’s minimum wage adjustment, and a bonus before the holidays (Interviews with union officials and labour mediators, December 2014). To be clear, while the unions and labour mediators keep referring to the government’s minimum wage decision to account for workers’
demands, most of the demands as seen in the reports are concerned with a higher wage rise, rather than a rise equal to the new minimum wage.

Demands for a higher wage rise can be split into two sub-categories, based on their justifications. The first one concerns the wage differentials between senior and junior workers, or between skilled and unskilled workers. The root cause for this, according to the labour lawyer, is companies’ failure to establish or enforce the wage table, and consequently to deliver a legal and fair pay rise. The second sub-category comes from workers’ comparison of wages between their company and others, or between the current and previous years. It appears that in strike-affected enterprises, two-way communication between workers and management is often non-existent; wage rises are decided by the top management without any engagement with workers.

It is interesting to see that, despite being brief, the union reports have different ways of framing workers’ demands. At times they convey a sense of sympathy with workers, suggesting, for instance that ‘the wage level between senior and new workers is unfair,’ and pointing out that ‘demand for an allowance [is] because lives are difficult.’ At other times, the wording is more favourable to management, suggesting that strikes took place despite the fact that the businesses have acted according to the law. The reports also provide subjective interpretations of workers’ attitudes, noting, for example, that workers ‘disagree,’ ‘did not accept,’ or in one case, ‘envy’ the wage levels between different workers.

None of the officials involved in strike settlement nor the annual reports on strikes attributed the reasons for strikes to workers’ awareness of their rights or the Labour Code. Most officials put the blame on the workers, saying that they were lured into or instigated strikes. The annual reports obtained from the provincial labour federation and the Department of Labour, Invalids and Social Affairs also stated that the persistence of illegal strikes is mainly due to workers’ unawareness of the Labour Code, and in particular the legal procedures for strikes. Only a third of the officials demonstrated sympathy for workers’ strike actions, albeit cautioning that they should arise from ‘legitimate and/or lawful rights and interests.’ One labour mediator, in particular, mentioned that the frequency of strikes in some companies is due to the management’s ‘broken promises’ to the workers (18/12/2014).
The year-end bonus, also colloquially known as the Tết bonus or 13th month wage, is the third most common reason for striking, following wage demands and ‘others’ category. The bonus allows workers to buy goods to celebrate the Vietnamese Lunar New Year, the most important holiday in Vietnam, and thus has a cultural significance besides material benefits (Chae 2003). Bonus-related strikes occur when workers want to push for management’s decision and announcement on the bonus, or when they are dissatisfied with the bonus issued. In the Labour Code, the bonus is not obligatory upon management and shall be decided based on business profits. However, if the bonus is specified and included in the company’s collective bargaining agreement, which is a legal document, then the management is obliged to issue the bonus as designated in the agreement (Interview with a labour mediator, 22/1/2015).

The third category of strike demands, concerning overtime, includes workers’ complaints about excessive working hours and management’s failure to pay the premium rates. The fourth category revolves around complaints about the poor quality of company-provided meals, and workers’ demand that the company increases the suppliers’ cost of each meal portion. Lunches and meals between shifts in the factories are either provided by a canteen owned by the company or by a food supplier. In the broader context, there have been reports of workers’ food poisoning and hospitalisation as a result of unsanitary and unsafe meals (Lao Động 17/6/2011, 18/6/2012, 28/9/2012; Người Lao Động 21/3/2014, 2/6/2014).

The fifth category is specifically related to the treatment by and attitudes of managers and supervisors to workers. Sometimes the report specifies their nationality, such as the Korean or the Chinese; at other times, it also includes workers’ demand to change managers and supervisors because of their rude treatment. The last category, ‘others,’ is concerned with managerial discipline and rules, such as unfair punishments, wage and bonus deductions; workers’ demands for extra allowances such as for transport; and management’s failure to provide for health care benefits, maternity insurance, and other issues relating to workers’ contracts and social insurance.

Regarding strike outcomes, previous scholars have suggested that most strikes in Vietnam have been effective in awarding workers with immediate gains, yet they do not necessarily improve post-strike labour relations (Pringle and Clarke 2011: 70, Lee 2006). Some of my respondents said that after a strike has been settled in workers’ favour, the management may
later retaliate against those deemed to be the strike instigators or put more pressure on workers’ performance and productivity (Interview with author, December 2014). The unions’ strike records in the province demonstrate a high percentage of 80 percent win or partial win for the workers. These outcomes, however, are not legally binding and there are no administrative measures taken against management for failing to honour them. As will be illustrated in the in-depth case study, a successful strike, or a peaceful strike settlement, does not necessarily deliver workplace justice.

**Grievances and reasons for strikes: an overview of workers’ accounts**

This section examines common grievances and reasons for strikes from my interviews with 24 workers in five different companies in the garment, footwear and wood manufacturing sectors. I am aware that the information that my respondents shared with me was shaped by their perceptions of me as an outsider, as well as the relationships between them and other informants. The interviews took place in a daily conversational setting between workers and an outsider who does not share their experiences and is not able to offer practical help with any of their work-related problems. While about a third of my respondents showed some hesitation or little interest in describing in detail their grievances or issues relating to labour disputes, the rest were willing to share their stories. Half of these respondents, mostly women workers, spoke with vigour and strong emotion, with some being thankful for my listening to their stories.

With regard to the sixth company, which belongs to the food processing sector and was chosen as an in-depth case study, it was easiest to talk with the core worker, Mr. Lê. We first met each other at a year-end party of the core workers in the province, and by chance shared the same table. Lê knew that I was a student researching labour disputes, while I also knew that he worked in one of the strike-prone companies that I planned to investigate. Similar to other core workers, Lê was open in sharing his thoughts and experiences in response to my questions. On a further note, he had previously helped to recruit workers for other labour research projects, so was willing to introduce me to his wife and four other workers, who worked in the same factory and lived in the same workers’ rental area.

With Mr. Lê’s introduction, his wife and the four other workers agreed to be interviewed. The bond between my key informant and prospective respondents in this case is much closer, compared to most other workers who were only acquaintances to my informants, or were
known to my informants through indirect contacts. Among them, the information I obtained from the three female workers was more detailed and filled with emotion compared to the other male workers. As discussed in the Introduction, I believe that my gender and the workers’ gender influenced the manner in which workers shared their stories. However, in this particular case company, there is another substantial reason concerning working conditions that explains the difference between male and female workers’ responses. Three female workers, including Lê’s wife, work in the food processing sections, where conditions are cold and at times unsanitary. Mr. Lê and two other male workers are in the quality control and storage sections. Like the women, they work long hours but they do not experience unsanitary conditions. As I understand from workers, the food processing sections are dominated by women, although the record I obtained from the labour bureau shows relatively equal numbers of male and female workers in this company.

The companies in which my respondents work pay by the hour, with the garment and footwear companies assigning certain quotas per hour or day for workers to fulfil. Their monthly incomes range from 4 million to more than 6 million Vietnam dong (approximately 177 to 266 US dollars). These are the final payments after the addition of the company’s extra benefits such as diligence rewards and transport allowances, overtime payments, and the deduction of social insurance payments and union fees. They also receive a year-end bonus averaging one month’s basic wage.

The most common statement from my interviews is concerned with the wage rise at the beginning of the year. Two-thirds of the workers mentioned that they normally received a new wage ‘when the state raises wages every year.’ Workers’ experiences of the company’s wage rise and the time at which it is implemented led them to refer to the state’s move as a benchmark for the company decision. In this respect, the government’s minimum wage adjustment, though not precisely articulated by the workers, has raised their expectations about a wage rise at the company each year, regardless of the extent of their legal knowledge.

Half of the workers who received a wage rise every year were not contented, even though some did not express their dissatisfaction. For instance, one of them said that: ‘Other companies raise wages twice a year, but not my company. Here they only raise wages according to the state, by the same amount to old and new workers.’ Two issues can be inferred from this statement. First, as far as I understand, ‘raising wages twice a year’ refers
to the government’s annual minimum wage adjustment plus a company’s wage rise according to its own wage table. As noted in Chapter 1, the wage table consists of varying wage levels for employees, from technicians and supervisors to workers on the shop floor. As explained to me by a labour lawyer, many companies pay workers in accordance with the adjusted minimum wage but do not take into account the wage table and thus fail to raise wages for senior people. The workers, though, may not interpret their problem in such a way, as none of the interviewed workers mentioned the wage table. Workers only specified to me, either in absolute or percentage terms, the rates of a wage rise as announced or implemented by management.

The second issue reflected in this quote is that workers tend to compare their wages with those of other workers in different companies, especially when they believe they are worse off than others. Their comparison gives a sense of an unequal situation between workers in different companies, and conveys an expectation that they should receive similar remuneration to that of workers elsewhere. Even though workers do not talk about the wage rise or their degree of (dis)content explicitly in terms of legal language, their narratives imply an understanding of an uneven implementation of the Labour Code across different companies.

The clearest reflection of uneven implementation of the legal requirement for an annual wage rise came in the account given by Mrs. Tâm, who has worked for six years in a wood-processing company:

Here [in this municipality] the best place is company X. Let’s assume that the state stipulates a wage rise of 300,000 to 500,000 dong. That company gives a different wage rise to different people, say 300,000 for those who’ve worked one year, 400,000 to 450,000 for those who’ve worked two to three years, and then 500,000 for more senior people. Every other company has that kind of wage differential except for my company (20/12/2014).

Tâm only presented her observation and gave no explicit explanation for the differences between her company and others. Similar to other respondents, she did not complain or express her discontent, but conveyed a sense that her company’s conduct falls short of desirable practice. There is, worse still, another problem with the wage rise implementation at Mrs. Tâm’s company:
When the state raised wages once every year, the company also raised our wages, but the money did not all go to our basic wages. It was divided and then added up to other bits like allowances or diligence money. For instance, if the raise was 300,000 dong, then only half of it was added to our basic wage and the rest to allowances or hazard money. It is just this year that all the money will be added to our basic wage (20/12/2014).

Tâm understood that the receipt of other monetary rewards depends on workers’ position and their actual work performance. For instance, the receipt of hazard money is only paid to workers undertaking work in a hazardous environment and the diligence money is only paid in full when workers take no day off in a month. Had the wage rise been added to the basic wage, workers’ monthly income would have been stable rather than being subjected to variation. Here the fact that she did not express her discontent warrants some discussion. One possible reason, suggested in her last sentence, is that the company’s conduct changed for the better that year. Second, when I asked whether her wage is sufficient to get by, she said yes, though with some reluctance, and added that this was ‘because I do not overspend (không xài quá) and know how to save money (biết tiết kiệm)’ (20/12/2014). Therefore, although she expected to have received a higher income after six years at work, she considers her current income to be sufficient. A male worker also showed the same attitude, saying that ‘even though my wage is not so good compared to others,’ it is enough for me and my family’ (30/1/2015).

Another reason for Mrs. Tâm’s lack of complaint could be that she was hesitant to share her views with me as an outsider. During our interview, she mentioned the case of a fellow worker, who once spoke up against management and then had to leave the company after a few days. Five other workers I interviewed in her company also recounted a similar situation, when their fellow workers were disciplined or dismissed after raising their grievances or concerns to the management and supervisors. It was only at the end of our interview that Mrs. Tâm told me briefly: ‘sometimes I think I know that the company is doing wrong, but I don’t dare speak up’ (20/12/2014). This example shows that workers’ framing of their

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12 As far as I understand, if we consider this issue from management’s perspective, not adding all wage rises to the basic wage would reduce the legal amount of management’s contribution to workers’ social insurance. Tâm and interviewed workers in this same company did not perceive the problem as such but only showed concern with the income they receive.
workplace conditions and (in)action are not based on their understanding of labour law but on their living conditions and previous experiences at work.

With regard to overtime, interviewed workers knew the premium rates for overtime work, which suggests that they have some familiarity with the Labour Code. All respondents said that overtime was forced upon them, both with and without advanced notice from the supervisors. One-third of respondents ‘hoped’ or ‘wanted’ the company to organise overtime regularly so that they could earn more income and feel more relaxed in their spending. One worker, in particular, said that regular overtime is a key factor in her decision to apply for her current job. Five workers complained about excessive overtime hours. Two of these were required to work overnight; a situation they described as ‘too hard’ or ‘unbearable.’ Yet, none of these workers had a clear idea of the number of hours they actually spent at work.

Only five workers referred to ‘rights and interests’, or ‘shared rights and interests’ (quyền lợi chung) when justifying workers’ previous strikes, which occurred because of low wages, the company’s broken promises, and poor meal quality. And yet, as in the interviews with other workers, their justifications did not elaborate upon details of the Labour Code, but rather upon the expectation of care and consideration from management. For example, a male worker, employed for 10 years in a footwear company, told me:

Recently, overtime has been compulsory. It used to be organised on Monday, Wednesday, and Friday, but recently it has also been added on Tuesday, Thursday and Saturday. […] There is a limit to our endurance! Workers have family and children, and they have to take care of them. Since a strike broke out in December, the company has allowed workers to leave early but they still have to complete the quotas before leaving (28/12/2014).

Here, he referred to workers’ family commitments to explain why overtime work, organised from the late afternoon until evening, pushed workers to go on strike. This implies an understanding that workers’ rights and interests are tied to their familial duties; something that the management failed to take into account. His exclamation about the limit of their endurance also speaks to workers’ previous attempts to appeal to the supervisors and managers to no avail. Such sentiments were also well expressed in other workers’ accounts, when they spoke of strikes as the inevitable choice when they were ‘aggrieved’ (búc xúc) and ‘frustrated’ (tức quá).
In short, the 24 respondents discussed here exhibited ambivalent attitudes in response to workplace problems. While they expressed certain feelings of discontent about companies’ practices and their working conditions, they conveyed the sense that most of the time they endured the situation unless the grievances got out of control and erupted into strikes.

The above outline of their narratives demonstrates that workers do not refer to law in framing their workplace grievances, and instead justify them in terms of certain expectations for moral and fair treatment on the part of management. Nonetheless, examples of workers’ references to the government’s wage rise or their entitlements to premium rates for overtime work illustrate that aspects of labour law still inform workers’ understandings, though not in a direct or explicit manner. The following in-depth discussion of a case study allows me to expand on the issues touched upon in this section and elaborate on the values and expectations implicit in workers’ strikes and their accounts of strikes.

**A company case study**

The company, which in 2014 had more than 600 employees, is a food-processing company based in an area where labour disputes are common. According to a report obtained from the labour bureau, the average income of employees in 2014 ranged from 3.3 million dong to 4 million dong. Workers in this company are entitled to a transport allowance, responsibility money or hazard compensation, and a diligence reward.\(^\text{13}\) The normal payment that workers receive every month includes the payment for their labour plus extra benefits, minus insurance money and union fees.

According to the strike record from the upper-level union in charge, strikes broke out in this company four times between 2010 and 2014. The causes of three strikes were related to the year-end bonus. In the strike in 2014, workers demanded an increase in basic wages; an increase in the year-end bonus; a payment of 200 percent premium rate for Sunday work; no deduction of the diligence reward for days counted towards annual leave; and that the company make known the wage rate for each production unit. Specifically in regard to the fourth demand, the diligence reward is given to workers who work the full number of working days in a month. This type of reward is not stipulated in the Labour Code so

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\(^{13}\) The responsibility money (*tiền trách nhiệm*) is paid to workers in the storage section, the hazard compensation (*tiền đợc hại*) is given to those working in the wastage and cleaning sections, and the diligence reward (*tiền chuyên căn*) is only paid in full to those who work the full number of working days in a month.
employers are not obliged to pay it. Many employers still apply this reward as an incentive for full work attendance, and apparently enjoy much leeway in its implementation. In some companies, for example, if a worker has one day off for personal reasons or two days off for sickness in a month, he/she will have no diligence reward. In some others, in those same situations, the reward is reduced by 30 percent. In the case-study company, workers were discontented because although they registered their days off as paid annual leave, which is different from personal and sickness leave and should be exempt from any deduction, they still had their diligence reward cut off.

Workers’ main grievance: the problematic piece rate payment

Among the five demands of the 2014 strike mentioned above, the last was the most pressing concern for workers and originated in the company’s unclear wage policy. In this company, wages are paid by piece rate. The piece rate policy is a notorious managerial strategy to exploit and discipline the workforce (Lee 1998, Friedman 2013). Having wages tied to a piece rate makes great demands on the worker in terms of speed and productivity. The problem in this company is that it has never disclosed the exact rate for each production unit to the workers. Despite working in different sections on the shop floor, all interviewed workers complained that they had no idea of how their actual pay was calculated. They did not know what a unit of production was worth, even though they could estimate, or could ask the line/group leader about the quantity they produce. A worker’s payslip only indicates the total amount of money earned per month, without any specification as to how this amount is calculated. The lack of transparency in wage calculation has been the key reason for workers’ grievances, and has turned a number of newly employed workers away from the company.

Besides the problem with the normal wage, the company also does not apply premium overtime rates as defined in the Labour Code. Indeed, some workers were not really sure whether such a rate had been included in what they called productivity money (tiền năng suất). This ambiguity was also complicated by a variance in the number of standard working days a month, which was set at 26 or 28 for different groups of workers. Many workers were required to work up to two Sundays in a month, whereas the Labour Code stipulates that employers must allow for at least four rest days a month.

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14 These details about the diligence reward and different implementation across companies were obtained from workers and strike records.
In examining the values and practices that underpin workers’ resistance, it is essential to take into account workers’ general descriptions of experiences of injustice on the shop floor in addition to the reasons they give for specific strike actions. Particularly in this case study, the two pressing problems about the piece rate and overtime rate have become an enduring part of workers’ shop floor experiences, which have entrenched their frustration with the management and supervisors over time. Rather than being articulated solely as reasons for striking, these two grievances are woven throughout workers’ stories about this workplace. As I will further explain below, these grievances and reasons for strikes are interwoven with each other and with workers’ concerns about their livelihoods and their desire for fairness.

Following up on their grievance stories, interviewees spoke of incidents when small groups of fewer than 10 people stopped work as a sign of protest right after receiving extremely low wages for their month’s labour, while some others burst into tears. There were many cases in which a worker who had worked for a full month received notably less money than one who had taken one or a few days off. In other instances, senior workers, who believed they worked harder and more productively, received a lesser amount than newcomers. The problems have persisted to such an extent that workers had to put up with them after all their failed attempts to speak up.

All interviewed workers in this company said that they had more than once voiced their queries and complaints relating to their wages to shop floor managers and supervisors. The unresponsiveness of supervisors and managers to workers’ queries and complaints has perpetuated and compounded their frustration. In several instances, a female worker named Hoa recalled that their manager did respond but their explanations, such as, ‘new workers are paid by the hour, not by piece rate,’ (8/3/2015) or ‘this month’s wage was lower because the orders were easier to complete’ were ‘unacceptable’ (8/3/2015).

The two pressing grievances regarding piece rates and overtime also appear most recently in workers’ written and systematic requests to the company. According to an interviewed worker, in 2014, the company union asked workers to fill in a form listing their concerns and requests. The most common requests were that the company make known the piece rate, and that it pay a premium rate for work on Sunday. There was subsequently no response, follow-up, or policy change in the company.
Subsistence, fairness, and reciprocity

Similar to other respondent workers, workers in this food processing company came to a rough observation about their wages based on their exchanges with workers in other companies. For instance, a male worker named Chiến complained: ‘Other companies raise the basic wages every year. I’ve worked here for more than 10 years but our basic wage only increased recently’ (17/4/2015). Two female workers also said that: ‘Overall, working here is very hard, but our wage is very meagre. At other places people are paid double for Sunday work. Here, there is no extra rate and we don’t feel at all motivated to work on Sunday’ (8/3/2015). In addition, they observed that workers in other companies with a similar length of work experience need to work for a smaller number of hours to receive the same income as they do.

Workers’ complaints about their wages and working conditions often contained references to ‘my friends in other companies,’ ‘my wife in her company,’ or even ‘other workers/people’ generally. With very limited time and opportunity to access the news and media, essential information about labour law was verbally circulated through workers’ social networks. Workers in this case saw better practices at other companies and wished for a similar experience at their workplace. Their comparison implies a desire for equal treatment and remuneration for all workers with comparable length of service.

However, unlike other interviewed workers, these workers also expressed a strong sense of unfairness in considering wage levels of different groups of workers within their own company. They reasoned that the income they receive does not match up with their workload as well as seniority. For instance, two female workers said that their many years of experience meant that, with respect to their speed and productivity, they were highly competitive, and this should have earned them a higher income than they received (8/3/2015). Other male workers also referred to their long service in the company as the reason for their dissatisfaction. As senior workers who had been employed for more than ten years, they said that it was ‘mean’ for them to receive wages that were little different from new or shorter-term workers.

As they went on talking about their problems, these workers also expressed their feelings about their relationship with management. They talked of their long service to the company as a form of loyalty and bond (gân bó) – a close emotional and interpersonal connection –
and felt bitter that this bond was not reciprocated by management. Mrs. Hoa put it this way: ‘The company can make a profit thanks to workers’ bonding. Why isn’t there any compassion for senior workers? In fact, the senior workers are often those being oppressed (đì)\(^{15}\) (8/3/2015). In her recounting, oppression manifests in forms such as discipline, punishment, surveillance, and blunt responses to workers’ queries. In a more measured manner, Chiến highlighted that senior workers like him are only the minority; besides the monthly income, he also deserves to receive a higher year-end bonus:

The company announced last year that workers employed for three to four years or longer would get a bonus of 1.3 month’s wage, and those employed for less than that would get a bonus of one month’s wage. It was quite unfair for those who had worked for 8, 9 or 10 years that they got the same bonus as people working for around half that time. You know, there are around 600 to 700 workers in the company but only 100 to 200 are long-time workers like my brother-in-law and me. The company does not give a higher reward to those who have bonded (gân bó) with the company for a long time (17/4/2015).

He further added that senior workers like him have seen their company go through several years of loss in the past until recently when it has recovered and started to make a profit. For all their service and contribution to the business, Hoa and Chiến expected to be reciprocated by the management, either by empathy through less oppression, less strict discipline, or a delivery of a higher reward. The employment relationship, in their view, was not one based on the labour contract and rigid rules, but should have space for fair treatment on the basis of affection. It is essential to emphasise that, in the broader context, affection, or sentiment, (tình cảm) is a central element of social relationships in Vietnam and a moral touchstone of one’s treatment of each other (Hoang 2015, Luong 2016). Any practice that fell short of workers’ expectations, in this regard, was seen to constitute unfairness and entrenched workers’ resentment.

Workers’ repeated attempts to improve their condition resulted in further promises being made and broken by the company management. These promises were often made after workers went on strike or raised their queries about their income payment. For instance, Chiến recalled: ‘After workers went on strike, the management promised and kept on

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\(^{15}\) The word ‘đì’ is a popular term used when one is discriminated against or is badly treated, yet I find that the translations of discrimination or maltreatment do not adequately capture the harsh situations that workers endured.
promising. Well, they promised about the bonus and we got the bonus, but the piece rate has remained unclear for the past 10 years’ (17/4/2015). Sơn, Chiên’s brother-in-law, added that the management once made a promise about the pay day and since then had been faithful to their word, yet had kept workers waiting about the piece rate. On the one hand, workers’ tendency to frame the management’s communication as a promise implies an expectation of the management’s moral integrity and of their being accountable for their own words. On the other hand, the fact that the management has kept their word when it comes to minor issues, such as the bonus and pay day, could possibly explain why these workers continue to hold on to the other more significant major piece-rate promise, only to be repeatedly let down.

Management’s refusal to address workers’ grievance has served to perpetuate its exploitation of workers. According to the Labour Code, workers are entitled to a one-hour break each working day. In this company, many workers have voluntarily given up most of their mid-day break: ‘Instead of having a one-hour break, many workers eat their meals hurriedly in fifteen minutes and get back to work’ (14/2/2015). As can be seen from workers’ accounts above, there are two reasons for this. First, workers have held on to the (false) hope and expectation that their hard work will eventually be rewarded through management’s recognition of their performance and long service. Second, and relatedly, their meagre average income leaves them with no choice but to put in more effort at work.

In our conversations, language that seems to derive from law has been adopted by workers to communicate their lay understanding of what is fair and unfair about management’s conduct. In particular, workers referred to the legal terms, ‘rights and interests’ (quyềnlơi). But we should be careful about what workers mean by these terms by considering the context in which they are spoken. While the Labour Code separates rights from interests, these two terms always go together in workers’ justifications of their strike actions and work stoppages, and when they talk about having experienced unfair managerial practices or non-compliance in relation to workers’ entitlements. In interviews, workers referred to rights and interests as inclusive of the need to sustain their livelihoods, as well as the earnings and rewards that they deserve for their labour and their ‘bonding’ to the company. Scholars taking an institutional perspective have shown that the legal separation between rights and interests mainly serves to constrain workers’ strike actions (Trần 2013, Chan 2011, Lee 2006). My analysis of workers’ stories reveals that this separation also fails to reflect workers’ desire for fairness.
For instance, interviewed workers evoked their struggle with everyday expenses when they recalled previous circumstances when the company failed to pay wages on time, causing them to stop work and demand their ‘rights and interests.’ Though we can easily assume that workers use the language of law to legitimate their claims, what they actually mean by ‘rights and interests’ in these circumstances has to do with their living needs: paying for rent, food, children’s schooling, sending money to their family back in the rural hometown, and sometimes saving for their new houses. In summing up their lives at the time as ‘insecure’ (không ổn định), these workers effectively linked their grievances and demands to management’s failure to ensure their livelihoods.

Thus far we see that workers have framed their grievances in moral terms, complaining about management’s broken promises, verbal abuse, and their meanness in treating long-serving and hardworking labourers. One of the key concerns in these narratives is reciprocity; a value that falls beyond the provisions of the Labour Code. Another is with livelihoods. This is especially evident in Mrs. Thư’s overall comment on the company’s legal compliance: ‘The company complies with law in all regards, except for anything that has to do with workers’ “rice and clothes” (miếng cơm manh áo)’ (14/2/2015). This response conveyed a sense of bitterness about the fact that law can be arbitrarily manipulated by management against workers’ basic needs.

There is, in fact, a provision in the Labour Code that reflects workers’ desire for a stable income that meets basic needs. Article 91 on the minimum wage stipulates that such a wage must meet the minimum living needs of employees and their families. Even though the government’s adjusted minimum wages have fallen short of this provision (Trần 2013, Lao Động 2/8/2014), it is a legal provision, which the VGCL has argued, should be honoured as a commitment of the state to Vietnamese employees. This argument was documented in a range of news outlets, which target both the general public, employees and factory workers, at the time the National Wage Council convened to deliberate on the new minimum wage levels (e.g Lao Động 31/7/2014; Người Lao Động 3/8/2014; Tuổi Trẻ 4/8/2014).

The norm of subsistence is an example of an existing moral value that overlaps with values embedded in state law. As suggested in the preceding paragraph, it is possible that workers’ expressions of (un)fairness, couched in lay language, involve an understanding about the minimum wage that they have learned from the Labour Code. However, it is just as likely
that the norm of subsistence, widespread in Vietnamese society, has influenced both the drafting of the Labour Code and, separately, workers’ understandings of labour relations.\textsuperscript{16}

In addition to their views of management, morality also plays out strongly in workers’ perceptions of the role of the state. First of all, it is essential to acknowledge that workers in this case study went on strike to appeal to the state and upper-level union officials, and only after they had exhausted avenues of direct communication with their supervisors and management. The intervention of the upper-level union, as part of the strike action team, gave workers an opportunity to voice their grievances and have them addressed. Raising their demands and queries to the upper-level union during strike settlement represented an act of resistance against the supervisors and/or managers who had rebutted them and told them to ‘shut up’ in response to their complaints and queries. Mrs. Hoa boldly stated that: ‘Whenever the authorities or unions asked us anything, we told them all that we know. We had to speak up to let them know that we are not stupid nor dumb’ (8/3/2015). The people that she referred to as ‘them’ could be understood as both the unions/authorities as well as the company management who have previously ignored their voices.

From an institutional perspective, the establishment of the ad hoc measure of strike settlement in Vietnam might work against the state’s objective of preventing strikes, as this measure has given workers hope of achieving their claims and subsequently leads them to continue resorting to strikes when workplace problems arise (Lee 2006, Do 2011). This proposition applies to a certain extent in this case study, as interviewed workers admitted that the union’s intervention allowed workers to voice and successfully claim their demands for the year-end bonus. Yet as discussed above, the year-end bonus is only the tip of the iceberg; it is the piece rate and low income that have troubled workers for many years. As the intervention has failed to address their most pressing concerns, the claim that strike settlement would beget more resistance does not adequately explain the intent of workers in this case study to repeatedly go on strike.

The case-study workers’ appeal to the state and official unions was mainly based on sympathy and sentiment and was also linked to subsistence ethics, albeit in an indirect manner. In my interviews with the workers, discussion about the state and official unions

\textsuperscript{16} It is not possible to precisely trace whether these understandings come from the Labour Code or from workers’ life experiences and social interactions.
only started when I asked workers more specifically about the course of events during previous strikes, rather than general questions about their workplace grievances and hardships. Hoa said with emotion: ‘We didn’t ask for too much. We only pleaded (xin) with them [the state and unions] to show compassion for workers, and give us a little bit more if possible’ (8/3/2015). If the compassion she expected from management arose from her bonding and contribution to the business, in this case it was premised on the perceptions of her and her fellow workers as subjects in need of assistance from the state. Her plea gives the sense that workers had exhausted all their justifications and reasoning, and thus could only rely on the very basic moral foundations of interpersonal relationships and livelihoods to seek a resolution to their problems. In describing the strike resolution, interviewed workers expressed their trust in the role of the state and unions in facilitating a decision from the management that somehow responds to workers’ claims. Mr. Lê’s wife insisted: ‘It is only when we saw the notice put up by the union that we accepted the resolution and got back to work’ (14/2/2015).

The way in which workers look upon the state for assistance warrants further discussion here of the Vietnamese state’s continued socialist ideology and its projection of the political connection between the working class and the Communist Party. The explanation that workers’ (repeated) attempts at striking are a partial result of the strike settlement measure fails to capture the morality and expectations underpinning their actions. These attempts stem directly from workers’ struggles with their livelihoods and are likely also to be influenced by the state’s and union’s rhetoric. For the past few decades since đổi mới, the state has maintained its vision of building socialism in the spirit of the slogan ‘A rich people; a strong, democratic, equal and civilised society’ (The Central Committee of the Communist Party of Vietnam 2006). This slogan is widely promoted through party and state officials’ public speeches and statements, and banners and posters in commemoration of national days. The core message of the above slogan, which captures the state’s vision of delivering welfare and social equality to its citizens, is reflected in interviewed workers’ expressed desire and expectation for an income that meets their livelihood needs and their appeal to the state for a solution to their problems.

Besides the above slogan, we can further understand workers’ expectations of the state by examining political rhetoric about the Vietnamese working class. The Vietnamese
Constitution proclaims a close connection between the working class and the ruling Communist Party: ‘The Communist Party, the vanguard of the working class […], is a faithful representative of the interests of the working class, the toiling people and the whole nation’ (Article 4). The Party’s Directive 20/NQ-TW in 2008 further affirms that the working class:

…. is the vanguard in the task of building socialism; a leading force in the modernisation and industrialisation of the country for the goal of a rich people, a strong, democratic, equal and civilised society; a core force in the alliance between the working class and the peasant class […] under the leadership of the Communist Party (The Central Committee of the Communist Party of Vietnam 2008).

Directive 20 also highlights that ‘looking after the material and mental lives of workers’ (chăm lo đời sống vật chất, tình thân cho công nhân) is an important task in the broader goal of ‘developing a strong working class’ in modernisation and the industrialisation era (See also Lao Động 15/1/2011). Further guidelines for the task put a stress on improving labour laws and policies that target workers’ wages, insurance, and housing support. The state’s and Party’s discourse with regard to the working class echoes the promise of economic welfare imbued in the socialist social contract in Vietnam before the economic transition (Trần 2013).

As a main institution overseeing labour issues, the unions have propagated the above welfare rhetoric in a range of their social activities and support to factory workers (for instance, see Đồng Nai Labour Federation, 2014). As I did not get a chance to observe strikes when they took place, I am not able to obtain clearer evidence of the influence of the state’s political rhetoric on workers’ language. However, the significance of the state’s political commitments towards the working class are borne out in workers’ expectations and their appeals to the state and union.

As can be expected, the state and union’s failure to adequately address workers’ appeals and meet their moral obligations has stirred workers’ distrust. As Hoa frankly put, while she has faith in the union’s announcement about the strike settlement outcomes, her overall view of the union is not positive. She made a sharp accusation of its collusion with management as follows:

Apparently, the union officials know more than enough about our problems but do not solve them. For us, we know that nothing can exceed the power of money. When the union gets into the company, it is always that ‘the money that comes ahead is the
wise money’ (đồng tiền đi trước là đồng tiền khá). The higher the position one has, the more money he/she is offered. Every step of the union at the company is all pre-arranged. We know this, but we have to speak up, otherwise they will think that workers are stupid… Now that they use money, at least we have to use our words and our minds so that they listen. We have to speak up about our grievances so that the union might do something right for us (8/3/2015).

This quotation illustrates a mixed picture of worker disenchantment and hope. On the one hand, this worker is frustrated that the state and unions have deliberately avoided solving workers’ problems; on the other hand, she does not give up hope that her voice shall at least be heard and workers’ demands acted upon. Her statement about money and corruption, which is a popular statement among ordinary Vietnamese, effectively sums up the reason behind workers’ persistent suffering. It questions the state and union officials’ moral integrity in response to workers’ demands and illustrates the erosion of workers’ trust in the delivery of a fair resolution. In speaking up on behalf of her fellow workers, she demonstrates that workers are acutely aware of the perpetual unfairness they face. Regardless of that, they have refused to keep their silence, have ‘risen up with one heart’ (đông lòng đứng lên) (14/2/2015, 8/3/2015), and persisted with solidarity in their resistance.

Apart from the moral narratives mentioned above, regulations and provisions derived from the Labour Code also emerge in workers’ responses, albeit to a limited degree. In recounting her conversation with the union officials, Thơ said: ‘As the union explained to us, the 13th month wage is the right and interest of the company [sic]. The amount the company rewards workers depends on how much they earn’ (8/3/2015). This woman later demonstrated to me how she grasped a sense of her legal entitlements, in wondering why her management did not raise the bonus despite her observation that production had been good during the past year. While the strike action team purported to seek a compromise with workers by explaining that management is not obliged to meet demands for interests, it did not stop this worker from employing her understanding to justify her query and expectation of a bonus rise. Other workers also recalled how the union explained the Labour Code to them, yet none showed any appreciation of the union’s functions in this matter. Mrs. Thơ’s aforementioned query concerning the year-end bonus also resonates with responses of interviewed workers in the other strike-affected companies. Their lay understanding of the Labour Code’s Article 103 on the bonus scheme has also come to them via the strike action teams or through their social networks.
Lê, a male core-worker, expressed the same grievances and observations of management conduct as other workers, but he had a different explanation from the others as to why he was dissatisfied with the company’s policies and the role of the state and union. He is different from his fellows in that he is fully informed about the Labour Code and has experience with legal aid activities.¹⁷ He told me that the upper-level union did not address workers’ demand for transparent piece rates, as a union official explained to workers that the company paid wages according to task completion, rather than by piece. He claimed that, in saying this, the union official only took in the manager’s words and did not investigate workers’ issues carefully, as workers were in fact paid with a piece rate, which is quite different from a task completion payment.¹⁸ Thus, in his account, instead of properly implementing labour law in response to workers’ demands, the union let workers down by speaking in the company management’s interests.

Lê recalled that, in 2014, a group of workers managed to compile and send a letter to management before the strike broke out. The letter contained five demands, which I list in the order recounted by this worker: transparent calculation of piece rates; payment of the premium rate for Sunday work; a year-end bonus; an increase in meal portions; and a transport allowance. There are some discrepancies between his account and the official strike record. In particular, the most important demand in his narrative is listed last in the record. Furthermore, the official record of the strike outcomes claimed that workers’ basic wages increased by 14.8 percent, which is also the rate at which the minimum wage rose in 2014. However, as mentioned above, the basic wage is the base for the calculation of social insurance contributions, rather than of the actual income that workers receive every month. This worker knows that an increase in the basic wage only leads to an increase in insurance payments; it does not otherwise necessarily alter workers’ monthly income.

The other demands included in the letter, besides the piece rate and premium rate discussed earlier, warrant further consideration in the context of workers’ livelihoods. Meal portions and transport allowances are extra benefits that are not compulsory for management, but they are crucial in workers’ struggle to meet their subsistence needs and reproduce their labour.

¹⁷ I will come back to how this worker obtained his legal knowledge in Chapter 4.
¹⁸ If the company applies this type of payment, the payment will take effect when employees finish certain assigned tasks. With this type of payment and work organisation, more experienced and productive workers, who spend less time finishing the assigned work, are not paid more for each task, but can complete more tasks and therefore earn more money each month than others.
From officials’ perspective, these demands can be readily classified as interest-based, which in turn suggests that company management has satisfied all their obligations to employees, and inadvertently shifts the blame for labour disputes from management to workers. However, as seen from the workers’ perspective, the failure to meet demands for meal and transport allowances boils down to the exploitation and underpayment that workers have endured – a situation of rights infringement. These rights are broader than the lawful rights invoked in official discourse and granted in labour law; they include the right to subsistence, fair wages and fair treatment. Official discourse that maintains the legal separation of rights and interests fails to take into account the desperate situation facing workers and in turn entrenches the gap between law and workplace justice.

A human resource manager’s views of labour law and workers’ resistance

This section examines the practice and implementation of labour law from the perspective of a human resource manager in the case study company, whom I will refer to as Mr. An. I interviewed all workers before proceeding to speak with the human resource manager, referred to me by the local authority. In order to help me secure an interview, an officer at the Industrial Zone Authority introduced me as a student intern of the People’s Committee working on labour policies in the province. The interview took place at a guest room in the company during office hours. To the human resource manager, I was someone sent from the Authority and therefore, sharing his views and information with me also meant sharing it, or a large part of it, with the Authority. This goes some way to explaining his complaints and expression of dissatisfaction in regard to labour issues (with a hope that these might be possibly seen to), as well as his evasive responses to questions relating to law and policy implementation. Had I contacted the manager in some other way, such as through the business association with which the company is affiliated, he would have possibly responded differently, as the business association would certainly share more common interests with its members and business partners. I anticipate that he would have been more vehement in stating his complaints, which were not just restricted to the minimum wage policy and strike settlement practices, but also included other aspects of law and policy enforcement.

Scholars commonly focus on how the disadvantaged and marginalised make sense of and use law, and do not examine how it is viewed by those with resources and in positions of power, such as Mr. An. However, the literature on sexual harassment and employees’ leave
rights in the US show that management’s strategies and interpretation of law are among the factors that shape employees’ inaction or reactions to their problems (Albiston 2005, Marshall 2003, Marshall 2005). My empirical examination of Mr. An’s stance on labour law will similarly complement and enhance our understanding of workers’ experiences and their resistance.

Unsurprisingly, An did not recognise workers’ claims and evaded questions about legal matters. He mentioned workers’ ‘rights and interests’ (quyềǹ lợị) as a general and collective term, and emphasised that workers’ demands must be lawful and appropriate, i.e. they must fall within the state’s regulations. For instance, demands for extra benefits, he said, are excessive because they are not stipulated within the law. His concern about the legality of workers’ demands effectively de-legitimised those that fall within the ‘benefit’ category but might be a part of workers’ concern for their livelihood. In my interview with him, An explained that the company pays by task completion, and that the payment is calculated according to the workload assigned for a certain number of hours and already includes premium overtime rates. He ambiguously claimed that workers are committed to working overtime on a voluntary basis. From the beginning of the interview, he effectively ruled workers’ struggles to be illegitimate and illegal, by insisting that the company’s policies and conduct are in compliance with law.

In response to my broad question about his opinions on the implementation of labour law, he complained about the difficulties for the company that result from the timing of the annual wage adjustment (the minimum wage policy is issued in November and implemented in the following January). As he explained, the company is often busy with bonus calculations around January every year, and they place their orders based on the wage rates of the previous year. He thus used business interests and profits as justification for the company’s failure to meet labour law’s objective of helping workers cope with rising living costs. Other than that, he did not explicitly comment on the Labour Code, but indicated his dissatisfaction with the fact that some aspects of it were not properly implemented.

An’s dissatisfaction started with the process of strike settlement. He briefly recounted the causes and resolution of previous strikes:

We understand workers’ expectation at the end of the year for the 13th month bonus. So we decided on a bonus worth half a month’s wage. Workers demanded more, and
they stopped working for a few days. The state officials then came down but didn’t ease the company’s worry. Actually, they explained the company’s situation to the workers but not thoroughly. In the end we had to increase the bonus to one month’s wage (15/4/2015).

The first two sentences give a sense of An’s understanding of and responsiveness to workers’ wishes. It can be presumed that he has learnt from previous occurrences of bonus-related strikes that they should decide the bonus rates earlier rather than later. He then referred to the three-way dialogue between the strike settlers, workers and managers, only to criticise the disappointing outcome brokered by the strike action team. In his view, the company’s concession was not one based on law, but was forced upon them by the half-hearted approach of the state and union officials.

Given that strikes had previously been around the same issue, I enquired whether the company had any measures to help prevent subsequent strikes. This question was aimed at enabling me to see whether management was making any effort to enhance labour relations on the shop floor. However, the response was directed at laying blame on the workers, and articulating a legal provision that makes their collective actions illegal:

As I mentioned, strikes were spontaneous and didn’t start with any procedure, so we couldn’t prevent them. The company hopes that the state has some deterrent measures, so that workers follow the right procedures. These procedures include sending petitions to management, so we can respond. If workers are not satisfied with the response, they can decide to go on strike but have to inform management about the date and time of the strike (15/4/2015).

It can be seen from this response that An refers to law to defend the company against workers’ claims of workplace injustices. Similar to the strike action teams, his complaints and explanations were centred on the spontaneity of workers’ actions. In this regard, An and the strike action teams share convergent interests regarding the purpose of law, that is, to de-legitimise and deter workers’ attempts to raise their voices.

An also complained about payments for strike days. In principle, workers are not entitled to such payment if they participate in (legal) strikes. In practice, however, many waged workers in the province, including those I interviewed in this company and elsewhere, have demanded the payment and consider it to be appropriate and normal. This manager was not at all happy about this:
Workers demanded to be paid for strike days. The state didn’t issue any statement to the effect that workers wouldn’t be paid, so this didn’t help the company. And what about the financial compensation for illegal strikes? You see, the procedures for bringing strike cases to the court are almost unworkable (15/4/2015).

It is clear from the interview that An has paid attention to clauses in the Labour Code that constrain workers’ strike actions, and it is these aspects of labour law he expects the state (and workers) to uphold. In contrast, he had little appreciation of the role of the strike action team in strike settlement, arguing that upper-level unions and state authorities should do more to put in place stringent measures to regulate workers’ behaviour.

In short, from this manager’s perspective, labour law serves as a tool to help secure workers’ obedience and deter their struggles. He referred to the existing provision on collective labour disputes in the Labour Code as a justification for blaming workers and the state for the rise and recurrence of labour tensions. The manager’s view of law as a form of control and discipline results in the failure to deliver workplace justice to which workers aspire. As it happens, the persistence of strikes has not catalysed any reform in wage policy or labour relations within the company. Adding to this, the half-hearted resolution by the strike action team leaves intact the company’s continuing strategy to exploit and underpay workers.

**Unusual peace**

If history had repeated itself, workers would have gone on strike in early 2015, well before the New Year holidays, to demand payment of a bonus. That no strike broke out was then referred to by both workers and An the manager as an unusual situation. Mrs. Thơ explained: ‘Last year wages were paid relatively promptly and the company situation looked relatively stable’. Mrs. Hoa added that: ‘the company announced the bonus early so we were reassured’ (8/3/2015). Workers’ confidence in the company’s profit and its sustenance of their livelihoods are the only explicit factors that explain such temporary peace.

However, the situation did not mean that workers were complacent. Mrs. Thơ raised a concern with me: ‘Why was the bonus still the same as that in the previous year, while it was obvious that the company made a very good profit?’ (8/3/2015). At the time of this interview, the bonus had been paid to workers. In raising her concern, Thơ demonstrates her understanding that the more the company gains, the more it should reward its workers. Chiền made a different observation, noting that workers’ incomes one month after the Lunar New
Year’s holidays were low – only making up about 70 percent of their usual average income. He also witnessed a small work stoppage and several people quitting the job. Therefore, amidst the absence of a company-wide strike, workers’ expressions of concern and observations like these nevertheless underpinned lingering grievances that can be easily stirred up again if there is a trigger.

Following an unusual peace in early 2015, two months after the New Year in 2015, workers were again on strike. The trigger, as could be expected, was the very low wages paid in the preceding month. The strike lasted for two and a half days, ending in an announcement with a long list of nine solutions from the management. I hereby italicise those I consider to be significant concessions:

- *The management will establish and make known the piece rates in the next few weeks.*
- *Overtime work is voluntary with employees’ consent. The company will apply the rates according to the existing Labour Code: 150 percent for week days, 200 percent for Sundays and 300 percent for public holidays.*
- *The company will ensure that there are at least four days off within a month.*
- The payslips will be made clear, including separate sections of payment.19
- The company will pay by the hour on the date […] for all employees whose work was affected due to the gas leakage incident.
- The company union’s executive committee will be re-elected.
- The management is obligated not to castigate or sack anyone, or transfer them to different positions. Workers will continue to stay in the same sections after production is resumed.
- The management is willing to receive employees’ opinions to improve working conditions. The company will arrange an opinion box at the main office and all queries will be directed to the management.
- The company will pay for two days of strike.

In the end, following workers’ frequent and persistent strikes, the company finally conceded its legal obligations and especially its commitments to improve labour relations. Indeed, with

19 The format of the new payslips was not mentioned in the announcement. However, as I understood from interviews with workers before this strike broke out, a clear payslip should have details of the amount of completed work and overtime payment.
these resolutions, management adequately addressed workers’ demands in the hope of curtailing their future resistance. However, the future prospects for workers’ wages and welfare are not clear, as the outcomes are not legally binding and their execution is contingent on business performance and management’s goodwill.

Case summary
In summary, labour tensions within the studied company have mainly revolved around lack of transparency with regard to wage payments; excessive overtime without workers’ consent; and a failure to implement overtime rates. Facing discipline and ignorance by management on the shop floor, workers have taken their collective grievances outside the company gates to make their voices heard.

The struggles of workers in this company illuminate the complex relationship between labour law, workers’ responses to injustice, and their justifications for those responses. The persistence of workers’ low payment further demonstrates the state’s failure to monitor the implementation of law, which in turn nullifies the role of law in protecting workers’ rights and interests. Workers have won some successes and some compromises from their employers through strikes, yet this has not translated into employers meeting their legal and moral obligations.

From an analytical point of view, my interviews with different groups of actors reveal different understandings of law. From management’s perspective, labour law is an instrument of control and regulation. Mr. An has attended to the one stipulation in the Labour Code that constrains and illegalises workers’ strike actions and views law as a tool to deter their resistance. Despite his dissatisfaction with the official unions’ approach to strike resolution, his comments on law and labour disputes are quite similar to those of the labour authorities and union officials.

Conclusion
This chapter has examined the role of labour law in the cause of factory strikes. In the broader context, as outlined in the introduction, the main reasons for strikes since 2006 have shifted from workers’ demands for rights to demands for interests. In Đồng Nai Province, union officials and labour authorities also recognise this shift, when they explain that strike demands tend to cluster around issues of bonuses, higher wages, and allowances rather than
those stemming from the businesses’ legal violations. Nonetheless, these official classifications miss important stories from the workers about workplace injustice.

Despite their sporadic references to the legal terms of rights and interests, interviewed workers do not perceive of their demands in terms of legal rights granted in the Labour Code, or demonstrate frustration about the company’s evasions of law. They instead invoke what they see as unequal situations of wage rise across different companies, the insufficiency of their incomes for meeting daily needs, the imbalance between poor wages and hard labour, workers’ family commitments, and the lack of concern and compassion from management. On the one hand, workers’ values and expectations concerning equality and subsistence can be traced back to Communist Party and state socialist rhetoric, the political connection between the Party and working class as stated in the Constitution, and the state’s promises to take care of the working class’ material and mental lives. On the other hand, reciprocal expectations and workers’ justifications about family commitments reflect prevalent norms in Vietnamese society. All these values and expectations have shaped workers’ evaluations of their experiences on the shop floor and make them persist in their resistance.

However, it is wrong to negate entirely the role of labour law in workers’ language of resistance. Regulations with regard to the government’s minimum wage, overtime rates, and bonus, couched in lay language, also appear to shape workers’ expectations and understandings of managerial conduct. In addition, the letter of the law also provides for the guarantee of subsistence and is also likely to inform workers’ expressions and appeals. This chapter therefore argues that there is a fluid relationship between values derived from law and other sets of social norms in the contribution to workers’ resistance.

The findings from this chapter have several implications for the broader scholarship on moral economy, labour relations, and rights consciousness. First, the findings extend the moral economy framework by showing that the values and ethics of peasant societies in the 20th century are also present in workers’ views in a society shaped by law and a post-socialist market regime of development. The right to livelihood and norm of reciprocity prevail in workers’ expectations of managerial treatment and contribute to their sense of unfairness. These moral perceptions also resonate with those expressed by Chinese migrant workers (Pun 2016, He et al. 2013); however, it is important to acknowledge that they are not all separate from law. While the norm of reciprocity is linked with workers’ sense of their
productivity, contribution to the business, and seniority and comes from outside the scope of law, the right to livelihood is reflected in the Labour Code’s minimum wage provision. These observations illustrate that both values derived from law and other norms within society shape understandings of injustice and generate workers’ resistance.

Second, the implication of these moral understandings suggests the need to bring in workers’ perspectives in the analysis of state-labour-capital relations in Vietnam. Previous work has mainly focused on how industrial transition and legal reform produce changes in the management and control of labour (Nghiem 2005, Pringle and Clarke 2011) or how the state responds to labour unrest (Tran 2007, Knutsen and Hansson 2010). It is essential to pay attention to how workers make sense of their relationship with the state and management, and how social norms and discourse outside the shop floor may play a role in informing such understanding. As discussed in this chapter, norms and discourse prevalent in Vietnamese society and the state’s rhetoric are reflected in workers’ statements of expectations about workplace behaviour and how they look upon the state for a solution to their problems.

Third, my analysis helps fill the gap in existing discussions of rights consciousness in post-socialist regimes, which considers rights consciousness as outcomes of citizens’ legal actions or their legal knowledge. Workers in my study demonstrate different levels of legal understanding: from the many who explain their wages and entitlements in lay terms to the ones who make sense of them through language learned from the Labour Code and associated regulations. Regardless of these variations, the way workers justify their actions in pursuit of ‘rights and interests’ are not limited to their knowledge of the Labour Code but are also drawn from their experiences of unfairness and struggles with everyday living. These workers exhibit consciousness of their basic social rights and a will to defend these rights without engaging with legal institutions.

The next chapter, focusing on workers’ petitions and complaints to the union, will reveal further experiences of law and workers’ use of it in their demands for justice.
CHAPTER 3: UNDERSTANDING LAW AND JUSTICE IN WORKERS’ LETTERS

Introduction

This chapter examines how labour law shapes another form of labour resistance in Vietnam: workers’ lodgement of letters to union offices, which has previously received much less scholarly attention than factory strikes. Some existing works on labour in Vietnam have looked at workers’ petition letters, banners, and posters and demonstrated the prevalence of legal terms in their protest language (Trần 2013, Kerkvliet 2011). However, similar to their analysis of factory strikes, these authors have not investigated what law means to workers – do workers refer to the labour law regime or the Labour Code in their complaint letters in order to condemn illegal practices and call for proper legal implementation, or to convey a set of norms and expectations about workplace relations? My analysis seeks to explore the norms and values that inform workers’ language and their justifications for appealing to the unions.

Workers’ lodgement of letters of complaint about their management with union offices is an action within a state-sanctioned channel, as workers appeal to institutions sanctioned by the state and responsible for monitoring businesses’ legal conduct. This action nonetheless does not abide by the formal procedures set out in the Labour Code, since the unions are not recognised as a legal authority responsible for resolving labour disputes. Of course, workers’ resistance can easily escalate and spill onto the streets if writing letters does not yield satisfactory outcomes. The question to be explored is how letter writers frame their grievances and demands as compared to workers who went on strikes, and whether they invoke similar or different understandings of justice.

The main source of data for this chapter is a set of workers’ collective complaint letters sent to official unions: the provincial Labour Federation and three upper-level unions in Đồng Nai Province. By ‘collective’ I mean letters that contain grievances affecting a group of workers, since the scope of this study is concerned with collective disputes. At the union offices, I was referred to the Examination Office, staffed by two to four officers, which take charge of receiving and processing workers’ letters, and taking note of their resolution outcomes. My aim in analysing these letters is to explore whether the issues raised in them
are the same as those raised by workers going on strike and obtain more details about the way in which workplace grievances are framed. At the provincial union and two upper-level union offices, I was allowed to read and copy a pile of workers’ letters, including all those lodged in 2013 and 2014. At the fourth union office, after some difficulty in requesting access to the letters, I was given two letters relating to collective complaints (as I specified to the office earlier that I was interested in collective disputes). These letters had been transferred from the provincial Labour Federation.

I read through all the letters and selected those concerned with grievances that stem directly from workers’ experiences on the shop floor. The criterion that they stem from shop floor experiences is important as there are letters written by a group of workers who had quit the company and demanded their back wages, allowances, or to have their social insurance notebooks back. As these grievances emerged after workers have left the companies, they tell us little about workers’ situations and how they make sense of their situations before the writing of the letters. I finally managed to collect 21 letters in total, and employ textual analysis with close reading to shed light on the norms, values, practices and discourse that underpin the language of the letters.

I also include in my analysis one letter written by a worker named Nguyễn Thị Thành in 2010. It was published in full in Lao Động (The Labour), the national labour newspaper, under the headline: ‘a worker’s letter full of grief’ (1/6/2010). Addressed to the VGCL Chairman, Mr. Đặng Ngọc Tùng, the writer clearly identified her work position and her company, a garment company named Hansoll located in Trảng Bom municipality. This letter is unusual in that it was sent to the top leader of the trade union organisation and is the only one published in full in the newspaper between 2010 and 2014. Compared to the above 21 letters, the letter contains both similar and outstanding expressions, complaints and claims-making. Finally, I draw on two letters held at the Department of Labour in 2015. These letters emerged from a

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20 The total numbers of letters vary between offices. I estimate that they range from 40 to more than 60. The offices had not retained letters prior to 2013

21 The social insurance booklet is a record of contribution towards employees’ social insurance. It is issued by the state agency to employees but retained by the employer during the course of employment. The employer’s refusal to return the booklet to employees after they quit their jobs makes it difficult for them to apply for unemployment allowances and other social insurance benefits. A common reason for such refusal is the employer’s failure to make a contribution toward the employee’s social insurance fund (Author’s personal correspondence with workers, 2014 & 2015).

22 In cases in which letters were transferred from the provincial union to the upper-level unions, and copies were kept by each union office, I have counted the letter only once.
collective labour dispute that involved the Legal Aid Centre and allow for an assessment of the role of legal aid in workers’ resistance. I managed to obtain these letters thanks to a labour official’s assistance.

This chapter proceeds as follows. The first section briefly discusses the complaint process handled by the union’s Examination Committee. The second section analyses workers’ letters based on the issues being raised and discusses their implications for our understanding of law, morality and (in)justice. The third section examines whether legal aid makes a difference to workers’ complaint lodgement from a case of a recent collective labour dispute.

**The union’s Examination Committee**

The unions in Đồng Nai have promoted themselves as offering an avenue for aggrieved workers to have their problems addressed (Đồng Nai Labour Federation, 2014 & 2016). Complainants can send their letters to the examination committee of the upper-level union in charge of the industrial or municipal area where their company is based. Once the upper-level union receives a workers’ letter, it is required to either verify the problem via the company union, or transfer the letter to the company union to resolve (VGCL decision 254/QĐ-TLD, 2014). In the first approach, after verifying the problems and if the company union is unable to reach a resolution on their own, the upper-level union will issue a letter inviting complainants and the company management to the union’s office to guide them through negotiation and settlement of issues reported in workers’ letters. If judging that workers’ complaints indicate a violation of labour laws and policies on the part of the company, the examination committee can forward a request to the labour inspectors of the provincial Department of Labour to check on the company’s conduct. The maximum duration for complaint processing is 10 days from the date of receipt. This promptness of complaint processing partly serves the objectives of local government and unions to prevent workplace tensions from bursting out onto the streets.

In practice, workers’ letters are often processed or transferred to relevant bodies in a very short time. I sighted two complaint letters of workers in the same company, signed by the writers on 4th and 6th January, 2014. The upper-level union chairperson sent through the complaints and a notice to the company union on 9th January, requesting that the union and company management resolve the issue and report to the upper-level union by the following
day. The company union and human resource manager compiled a report with their solutions on time, effectively complying with the upper-level union’s request.

However, the promptness of letter handling does not necessarily favour aggrieved workers. As I understand from reading the unions’ annual reports, a prompt and timely resolution of workers’ collective grievances is one of the necessary measures to prevent strikes and maintain industrial stability. Another problem with the handling process is the anonymity of the letter writers. The VGCL amended the rules in 2014 so that the letters must now contain the date of writing, name, address and signature(s) of the complainant(s). This is a notable change from the pre-2014 version of the rules, which allowed for letters to be sent anonymously, and means that anonymous letters are no longer eligible for processing. As of 2014, complainants’ identities can be revealed to the company union and management, making it possible for them to be penalised for complaining about their bosses. Thus, while the official union has opened up an arena beyond the formal system of dispute resolution in the Labour Code in which workers can access and raise their complaints, this process of complaint handling might ultimately put them at risk. Workers who sent their letters might not be aware of the process following their lodgement. As the data analysis will later demonstrate, their decision to send a letter often arises out of helplessness and desperation.

Sending complaints to the unions was unpopular with workers that I interviewed. A third of them recalled the unions’ participation in the settlement of strikes in their companies but made no mention of their intention to directly appeal to the unions in writing or past experiences of doing so. When I gave some prompts suggesting the role of these unions in resolving workers’ grievances, workers demonstrated their disinterest or even distrust. Only one worker recalled that one of his fellow workers, on behalf of a production group, lodged a complaint letter to the upper-level union some years ago. The letter writers complained that their meals for overtime night shifts had been reduced in number and demanded that management provide the same number of meals as before. They succeeded in having this problem resolved. However, according to my respondent, that was the exception among many letters lodged by workers in that company. Considering the recurrence of strikes in that company for many years, one can see that such an issue is trivial compared to other ongoing grievances such as excessive overtime and coercive treatment. When I asked my respondent whether his fellow worker, who wrote the complaint letter, is still working in the company,
he said yes, and straight away explained that that was because the letter was anonymous. He
sounded very certain that complainants who identified themselves would be called to the
human resource office and disciplined or dismissed.

Workers’ letters to union offices

Some notes on data and workers’ self-ascription

Among the 21 selected letters, 16 letters have no signature, though writers still identified
themselves as ‘workers in the company / section X.’ In two out of those 16 letters, the writers
explicitly stated that they refrained from revealing their names and staff numbers for fear of
losing their jobs. Three letters were written and signed by one person on behalf of a group.
Only two letters contained multiple signatures of 10 and 18 people respectively; the second
also contains a list of complainants’ names.

The letters included in this analysis vary in their titles and style of writing. The first group of
eight letters are entitled ‘request letter’ (đơn đề nghị / kiến nghị). All of them explicitly
contain the writers’ request for the union’s and/or management’s consideration of their raised
issues. A second group of eight letters are titled ‘complaint letter’ (đơn khiếu nại). Among
the latter complaint letters, only three writers stated their intention to ‘sue’ (kiện) or
‘complain about’ (khIEW nai) supervisors or managers; while the rest talk at length about the
issues of concern and request some intervention from the state and union. The third group,
four out of 21 letters, are entitled ‘letter requesting resolution / assistance’ (đơn xin xem xét
giải quyết / trợ giúp), and only one is presented as a ‘report letter’ (đơn trình). The style and
structure of letters are much the same across all groups. As can be seen from their titles, not
all of the letters are explicitly of a resistance nature; nevertheless, the language that appears
throughout the texts adequately conveys workers’ complaints or demands and their wish to
rectify existing problems. Even though some of the request letters do not lay any blame or
make any accusations, they were presented in a manner that shows workers’ disagreement
and dissatisfaction with company management’s decisions.

The letters are concerned with workers across 16 companies, with three companies each
having two letters raising similar issues. In the case of two of these companies, the letters
were written on two consecutive dates; in the other case, they were written six months apart.
All the companies belong to the footwear, garment, electronics and wood manufacturing
industries, or plastic, metal and chemical production sectors.\textsuperscript{23} The number of employees in these companies ranges from 170 to more than 18,000.

The audiences to which the letters were directed are an important factor that shapes their style and language. Most of the letters appeal to the union and state officials – those whom workers regard as having power and authority. These writers often tried to put emphasis on their helpless and despondent situations. The remaining three letters, titled ‘request letter,’ were directed at company management and were about workers’ demands for a higher wage rise. The language in these letters is more measured and assertive. They were sent to the union office to serve as evidence that workers had previously appealed to management in vain. In one case, the letter has a signature of support by the company union’s chairperson and gives a ‘deadline’ to the management for resolving workers’ requests.\textsuperscript{24}

Compared with most responses I obtained from interviews in Chapter 2, a majority of the letters are delivered with stronger emotion and exclamations. Such a difference can be partly explained by the contexts of the interviews and letters: while two-thirds of my interviews took place when workers’ grievances and complaints were over, or when their workplace conditions had improved, the letters were written at a time when grievances and complaints were unfolding or intensifying. Fifteen letters, in particular, provide detailed stories and impassioned accounts of the complainants and their affected fellow workers, while the remaining six letters merely make brief complaints and requests. While most interviewed workers were wary of speaking badly about their bosses, I found that half of the letters contained workers’ explicit allegations about and personal attacks on supervisors and management’s behaviour.

The translation of the letters to English was a fascinating but challenging experience for me as a native Vietnamese speaker. Many of them contain long sentences without breaks or commas, spoken language and shorthand, and at times vague references to the actors or subjects of particular actions. Such vagueness and disorganisation are understandable since

\textsuperscript{23} Only five of the complaint writers mentioned the type of work in which their company engages. I obtained these details by looking up the companies’ names on the internet and in the strike records (five of these 16 companies have been subject to strikes).

\textsuperscript{24} In this case, a strike may have broken out following the company management’s failure to address workers’ requests. The letter could have made its way to the union office after union officials, as part of the strike action team, came to the company to settle the strike.
most letters were likely written by people suffering from stress and distress. In my translation, I have refined the grammar of long sentences to make them easy to follow, but have kept intact the writers’ rhetorical devices, such as rhetorical questions and exclamations. The meaning of some ambiguous references can be surmised from reading the surrounding text. I try to literally translate the lay language and common expressions when I am unable to find the English equivalent. While all efforts have been made to preserve the writers’ original meaning, my translation may not have done justice to the feeling they put in the letters, especially through exclamatory and emphatic words.

The way in which writers address their audiences, who are either state authorities, unions or management, demonstrates a norm of deference typical in Vietnamese social hierarchies. All of the letters start with ‘respectfully sent to’ (kính gửi). In Vietnamese, the word ‘respectfully’ (kính) is normally used in writing when one wishes to formally address a person or people of an older generation, holding a more powerful position, or having certain authority and influence over oneself. The letters that were directed at the state and unions refer to these bodies as ‘the upper agencies and departments’ (ban ngành cấp trên), ‘the authoritative agencies’ (cơ quan có thẩm quyền), or, in a more respectful way, ‘the honourable office / agency’ (quý cấp / quý cơ quan). The others simply make reference to management as ‘the management board of company X.’

Also at the start of each letter, the writers generally refer to themselves as ‘the collective of workers in plant, section, company X,’ ‘we workers,’ ‘workers, brothers and/or sisters,’ or ‘employees.’ Their accounts feature their interactions with ‘supervisors,’ ‘plant leaders,’ ‘group leaders,’ ‘human resource people,’ ‘managers,’ and at times ‘cadres.’ Workers’ use of the word ‘cadres’ (cán bộ) is interesting, since this word normally refers to public employees, officials and authorities. In workers’ accounts, ‘cadres’ means people working in the office and occupying a managerial or administrative position in the company. Without detailed descriptions of workplace hierarchies, it is nevertheless clear that complainants, as manual labourers, regarded those in managerial and supervisory positions as belonging to a different group that is more privileged and has control over them.

Workers see the company unions as being on the same side as those in managerial positions. Broadly speaking, this is not surprising, since union positions are often filled by human resource staff, supervisors and managers, who are unelected and unknown to the workers.
The statement in one letter, ‘I don’t understand what our union is for,’ suggests that the existence of the union is only symbolic. In other letters, the complainants express their disappointment about the union’s blatant collusion with management and its failure to improve workers’ conditions. These statements do not necessarily reflect workers’ understandings of the company unions’ legal functions, but rather imply their own views and expectations that a good union should be able to help them address their workplace problems.

Half of the complainants describe themselves as rule-abiding employees and workers. For instance, one letter starts with: ‘We work full time and have not violated any rule or caused any physical damage to the company.’ The writers of this letter refer to workers’ good behaviour, hard work, and compliance with company regulations to lay the ground for further justification of their claims. A few other writers first refer to their long service and emotional attachment to the workplace as their second home, which they then contrast with the reality of discipline and exploitation they encountered.

As an exception, the letter that made the news headlines (hereafter referred to as ‘published letter’) starts with an emotional plea and the female writer’s sense of helplessness:

We workers here have so many grievances but we don’t know how to find equality. I did ask for help from some social organisations but didn’t get any response. After some time pondering and looking for your address, I decided to write this letter to you. No! I do not ‘sue’ the company; I only wish to raise my voice as an employee…I hope you put yourself in our position as employees, sympathise with our fates as workers, and look at the environment in which Vietnamese citizens are working (Lao Động 1/6/2010).

The writer, named Thắm, talked at length about how and why she decided to try this last resort, after almost giving up on her search for ‘equality’ – an issue that resurfaces at the end of the letter and forms a vital part of her claims. By positioning herself as one of the ‘employees,’ ‘workers,’ and ‘citizens,’ she asserts her legal and political identity in her relationship with management and the state. This not only justifies her appeal to the chairman but also appears to be aimed at evoking a duty of care from the leader of the trade union. I can see the paradoxical situation Thắm was in when she talks about her urge to solve workplace grievances and fight injustice yet refrains from ‘suing’ or challenging the company. Yet throughout the letter, she cannot help but accuse the managers and supervisors of perpetual exploitation and maltreatment of the workers, expose the power structure that
has pushed her to cry out in desperation, and ultimately bring home her argument and aspiration for a ‘rightful struggle’ (đấu tranh đúng dân).

**Working hours and overtime**

None of the workers wants to work [during the lunch break], but they have to, because they are afraid of being repressed. During normal working hours, they [the management and supervisors] squeeze as much labour out of us as they can, and then do not allow us to have a rest at noon. As a consequence, the health of us workers has deteriorated seriously.

This extract exemplifies a common type of grievance relating to overtime work. Related complaints, which appear in 10 letters, include reductions in workers’ rest time, forced overtime, and the failure to pay extra for overtime work. These complainants depict the exhausting conditions in which they work and call for reasonable working hours on the shop floor. They particularly attack the coercive behaviour of management, frequently describing such behaviour as ‘coercing’ (ép) and ‘forcing’ (bắt) workers to work overtime. The above extract, which is similar to statements in three other letters, makes clear that long working hours affect workers’ health and, consequently, the reproduction of their labour power. The other letters weave this issue into a broader picture of their working conditions as ‘too stressful’ (áp lực quá), or ‘unbearable’ (không chịu nổi). Two writers also attribute workers’ overly hard work to management’s material pursuits, obsession with quotas, and ignorance of workers’ wellbeing. Titled as ‘request letters,’ these two letters end with a clear statement that the coercion of work from workers during lunch and break time must be stopped.

The following is an example of workers’ concerns about physical health, as well as about management discipline and their material pursuits:

The vice-managers of many plants force workers to work during lunch break, giving the excuse that there are many too many orders and rush orders. *They are afraid of falling short of the quotas and are just aiming for personal achievements.* […] What we really need is our health. We can’t take a rest at noon when the machines are still running; as a consequence, we get exhausted in the afternoon. The problem has continued for quite a long time. Do the company management know about this? Or do they know the problem but intentionally ignore it because it is in their interests?

This extract and the one that precedes it do not mention exactly how many hours workers have to work overtime. Yet the description of exhaustion and the impression that they give of the continuance of the problem suffice to describe the management’s exploitative
practices. The rhetorical question about the management’s deliberate ignorance of the overtime problem skilfully amplifies the previous criticism of their self-interests and sums up the writers’ claims about unfairness stemming from managerial immorality.

The writer below did not only speak up against long working hours but also contrasted it with the situation during slow periods. Different from the previous extracts, this one contains short statements in dot points describing several other workplace problems as ‘unfair.’ It reads:

The company where we work has the following unfair policies:

- When the company has rush orders, workers must work overtime from 7.00 to 20.00, including Saturday and Sunday.
- When the company has no orders, it no longer needs workers and is ready to sack anyone anytime. Dismissed workers can only get one month’s wage and no type of allowance.

While this extract contains more details about the dates and hours of work, it does not indicate whether workers here were aware of the legal overtime limits and legal rest time. The second point given above also makes no mention of the legal provisions regarding employment contracts or the lawfulness of management’s decision; it instead evokes a sense of unfairness about receiving little compensation upon losing one’s job. The phrase ‘no longer needs workers’ (không cần công nhân nữa) in the Vietnamese original conveys one’s sorrowful feeling following such unfair treatment. These two points raised by the writers convey an understanding that business’ demand and profits, rather than any other type of care or obligation, determine workers’ plight. There is no clear request or statement at the end of this letter expressing how the workers would like these unfair policies to be rectified, but only a general request for the union’s timely ‘consideration, intervention, and resolution.’

In one case, the writer not only points out the coercive manner of work but also management’s failure to pay for extra working time. He/she writes: ‘For the past year, in the company and especially plant 2, the supervisors and plant managers have often forced workers to work before start time and during lunch break, but have not paid us extra money.’ This note about underpayment demonstrates the worker’s subjective view of what constitutes fair pay and fair work hours, as the rest of the letter makes no mention of legal provisions concerning overtime. This is one of the two letters that explicitly detail workers’
dissatisfaction with the lack of extra pay within a broader complaint about coercive and exhausting work.

Of all ten letters considered in this sub-section, only two contain explicit reference to the Labour Code’s provisions relating to working hours. In one of the latter cases, this was woven in with another criticism of the self-interestedness of the managers:

As we know, according to the regulations, we work for eight hours a day and have one hour lunch break which is not counted towards our working hours. The current law also has rules for overtime. Yet due to many rush orders and their obsession with output, the plant managers forced us to work during break time, for 30 to 40 minutes.

The writer adds that: ‘we think the company should be clear about law,’ which suggests certain expectations about management’s legal behaviour. Yet this is not followed by a call for an honouring of legal rights. Rather, a reference to law here serves to complement and emphasise the management’s unethical behaviour. The other letter that contains reference to the Labour Code includes similar statements:

From 2011 to 2013 we worked for the company for a period of 12 hours per day (72 hours per week), which was many hours. The company back then still allowed us some rest time. But since 2014 until now we haven’t had any rest. If we continue to work like this, our health will not be maintained for more work in the long term. In this situation, does the company violate Article 106, section 2b of Chapter VII of the Labour Code?

This example is the only one of all the letters I collected at the union offices that poses an explicit and straightforward question about a legal term and the management’s legal behaviour. Still, this letter starts with the workers’ general account and their subjective view of working hours, which is that they are ‘many’ but at least allow for some rest. The question posed at the end calls for a consideration of workers’ legal rights and a condemnation of violation, but the writer seems to put more stress on the company’s unfair treatment that affects their physical wellbeing and labour productivity.

_Workplace discipline_

As indicated in the letters, workers commonly experience three forms of discipline: threat of punishment for speaking up about their own concerns and grievances; being forced to lie about their working conditions; and verbal abuse by line leaders and managers in response to workers’ queries and requests. Workplace discipline is not presented as a problem
requiring intervention in itself, but is coupled with grievances related to wage policy, overtime and working hours. In the following example, the writer complains about the company’s failure to raise wages before pointing out why workers were better off keeping their silence:

Recently, on 1st January, the state issued a wage rise decision for workers. But the company gave the excuse that workers violated the workplace regulations and did not raise wages for us. We consider this conduct as abusing and exploiting workers’ labour. Having known that, we did not dare to appeal because we were worried about being repressed in our job [italics added].

The writer here combines his/her general understanding about state regulations and their own moral judgements to express dissatisfaction about the company’s decision. This reference to the state suggests a lay understanding about the annual minimum wage adjustment issued by the government, which normally takes effect at the start of a year. In writing to the union, these workers refused to be submitted to the threat of managerial retaliation but instead struggled to raise their voices to a third party and seek intervention. The availability of a complaint mechanism beyond the workplace and workers’ perception of the role of stakeholders involved in such mechanism, to be discussed further, can play a major role in their decision to escalate their grievances.

This letter is one of three letters that accuse management of exploitation (bóc lột). In Vietnamese, the word ‘bóc lột’ is understood as outrageous extraction of others’ labour and seizure of their products to accumulate greater wealth and power. Often used to talk about the relationship between landowners and peasants in feudalism, it implies the maintenance of a social hierarchy in which the exploiting / landowning class (giai cấp địa chủ / bóc lột) shall always enjoy unfair benefits from the lower classes’ labour, service and obedience. When used in the contemporary context, for instance, as seen in the media, exploitation refers to labourers’ and employees’ excessive work while receiving unfairly low pay. It does not usually have any class connotations, nor does it imply a broad critique of capitalism. However, in Communist Party documents – at least up until the 1990s – exploitation, along with other problems of coercion and injustice, is mentioned as an inherent problem of capitalism.25 For instance, according to the 1991 Report for the Seventh National Party

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25 ‘áp bức’ can be translated as either coercion or oppression, and ‘bất công’ can be understood as injustice, inequality, or unfairness.
Congress, a socialist society is one in which people are ‘liberated from coercion, exploitation and injustice.’ Yet this statement about the socialist vision was dropped in the Report for the Tenth National Party Congress in 2006 and in the revised Fundamentals of the Party in 2011. The writer’s usage of the term ‘exploitation’ in the above letter does not give much sense of excessive labour, immiseration and injustice, as encountered in earlier socialist and popular discourse. However, when used alongside the other word ‘abuse’ (léri ụnụ) and followed by the mention of threat, it conveys a sense of unfairness quite similar to that associated with criticism of the landowner-peasant relationship.

In four letters, workers had accumulated longstanding grievances, both individual and collective, to such an extent that they could not be condensed in a few pages. In these letters, complainants describe their frustration as being shared by all workers on the same production line or in the same group. The following extracts talking about one company lucidly illustrate the ongoing collective experience of dissatisfaction and feeling of powerlessness:

Letter A: Many times we caught a fever and had to take leave to go to the doctor’s. Yet after that, when we got back to work, the manager and line leader asked us to stand at the end of the line for the whole day and did not let us work as usual… We were also given a discipline note. Don’t you think that we were pushed too hard? Many times we went to the human resource office to talk about our problems but our complaints were in vain [italics added].

Letter B: We were so aggrieved when other workers were unfairly scolded and yet none of us dared to raise our voices. If we had, the managers would have put more pressure on us and would finally have sacked us [italics added].

Besides a strong sense of sympathy towards the mistreatment of other workers, the writer also conveys a collective feeling of anxiety and frustration. The rhetorical question in particular conveys the extremity of endurance and an emotional appeal to sympathy from the audience about a situation that has gone beyond what is deemed morally acceptable. I understand the ‘pressure’ in the second letter to be a reference not just to the physical strain of labouring and catching up with quotas, which existing ethnographic studies on labour relations in Vietnam have shown (Chae 2003, Nghiem 2005), but also to the mental strain resulting from arbitrary discipline. I interpret this protest against others’ suffering as embodying an urge to protect oneself against the same sort of mistreatment. Workers’ exposure of immoral conduct to a third party represents a fight against the silencing of their
voices on the shop floor and a wish to stay in the job (and earn their living) without being destroyed emotionally.

Perhaps the most distressing embodiment of workers’ hardship and demoralisation is captured in the following lines, which were extracted from two letters talking about the same company:

**Letter A:** *In fact, this is not a company but a jail. In this situation how can we live?* The manager and group leader have coerced workers too much, especially with overtime. I myself have seen many people who work hectically but are still yelled at, to the point that they cry when they are alone [italics added].

**Letter B:** I sue the company for coercing and *exploiting* workers’ labour. Workers have to work overtime beyond their health limits. Many workers are sick but they are not allowed to take leave. The Chinese treat workers *like slaves, or prisoners.* Our working hours are 12 hours a day, from 7.00 to 19.00, Monday to Friday, and to 18.30 and 17.00 on Saturday and Sunday. The company compels workers to work 30 days in a month, every month. Anyone who is absent from work will be fined 300,000 dong [italics added].

It seems that these complainants want to draw the audience’s attention to the horrible working environment as a whole, rather than the specific problem of excessive working hours. The analogy between the company and a jail, and between workers and prisoners, tells a disturbing story of subordination in which human dignity and the right to self-esteem are ripped away. The rhetorical question in letter A again has a powerful communicative effect – it presents an accusation of the infringement on one’s freedom of choice. The description of working hours in an intensifying tone has a visual and spatial effect – it sketches out an enclosed and exhaustive setting similar to a labour camp occupied by ‘slaves’ or ‘prisoners’ rather than dignified workers. The imposition of a fine as a punishment for workers’ absence from work leaves them no choice but to remain encased in this cycle of exhaustion.

The writer’s mention of the Chinese (*nguời Trung Quốc*) in letter B warrants further consideration. It is possible that this writer’s depiction of the ‘slave-like’ conditions of workers in this factory reflects nationalistic sentiments and resentment at the long history of China’s domination and its political influence over Vietnam. Apart from the Chinese, I also found reference to Japanese and Korean managers or supervisors in four other letters. Compared to letters in which the managers’ ethnicity is not mentioned (from which we can
assume that the managers are Vietnamese), the depictions of managerial treatment in these four letters convey more deeply a sense of workers’ demoralisation and inferior status. An ethnographic study conducted by Suhong Chae of a multi-national textile company in Ho Chi Minh City in the early 2000s similarly found that tensions on the shop floor were entrenched along ethnic lines (in that case, between Vietnamese workers and Korean managers (Chae 2003)). And Chae’s study found that the Korean managers often ‘shouted’ (la) rather than ‘talked’ to the workers (Chae 2003: 93), a behaviour that workers saw as rude and contemptuous. It is not possible to make a conclusive statement about the role of ethnic difference in the letters under examination here. However, one interpretation is that, in evoking the managers’ ethnicity, the writers want to bolster their accusations of the managers’ immorality and appeal to the sympathy of union officials who share the same bond of citizenship with them.

The sharpest allegations about management conduct are seen in the published letter, in which Thâm extends her creative and provocative use of words to describe how workers experience and perceive of law in their relationship with management.

I have to bitterly say that the company management is ‘grabbing money’ and ‘gluing people’s mouths’ to cover up what is called ‘labour coercion and exploitation.’ The lack of knowledge and understanding about the Labour Code has meant that employees’ legitimate rights and interests are trussed up (xíềng xích). We work hard, yet our wage is meagre while there are too many ‘laws.’ The company asks workers to arrive early to attend a meeting ‘before [the start] time.’ Then when we finish late, we don’t have any more money. Our lunch break of 1 hour is also ‘cut at the head and cut at the tail’ of 20 minutes [quotation marks in original] (Lao Động 1/6/2010).

Workers in Thâm’s company seem to face the same problems as the food-processing workers discussed in Chapter 2: there is an imbalance between their hard labour and the incomes they receive. Instead of focusing her complaint on the wage payment, Thâm uses it as evidence to support her broader accusations of labour exploitation, which appear for the third and last time in this analysis. The extract and other sections in the letter document a range of exploitative behaviour on the part of management, such as the failure to remunerate workers fairly and very intense work demands. There is also a legal dimension to it when she points at management’s ignorance of labour law and the harm this causes to workers’ rights and interests. However, here and in the rest of the letter, Thâm does not condemn management’s behaviour as illegal; she instead draws the audience’s attention to other ‘laws.’
The ‘laws’ to which she refers in the middle of the extract are stringent and unfair company regulations that serve the purpose of discipline and exploitation. I understand this sarcastic use of law as conveying similar meaning as the term commonly encountered in the media in Vietnam: ‘jungle law’ (luật rừng). Such negative depiction of law refers to unofficial, unreasonable and even illegal rules, often imposed or exercised by businesses and creditors (for example, see Dân Trí 14/2/2014; Người Lao Động 4/8/2014; Tuổi Trẻ 11/9/2014). Back when I was residing in Vietnam as a teenager until 2009, I also heard the term ‘jungle law’ from family members, relatives and acquaintances of older generations to refer to unreasonable rules exercised by the police, civil security forces, or gangsters. In Thắm’s recounting, the many ‘laws’ manifest in the arbitrary and humiliating actions of supervisors, line leaders and managers with regard to working hours, cases of workers’ sickness, and production quotas. Her reference to the Labour Code does not just bolster her accusations of unethical behaviour among managers but also hints at the Code’s powerlessness to defend workers in the face of other ‘laws.’

Apart from the sarcastic use of the term ‘laws,’ what is striking in her letter is the coupling of workplace discipline with other observations of treatment at work. Thắm’s depiction of the favour enjoyed by some office workers in contrast to production workers, with respect to eating meals and using mobile phones, for example, acutely illustrates her yearning for ‘equality,’ stated at the start of the letter:

There is a regulation that bans workers from bringing personal amenities such as bottles, umbrellas, hats and coats, into the plant. Workers have to turn off their mobiles when they are in the plant. The company hangs a notice board […] which has the following sentence about conduct: ‘No discrimination,’ but, needless to say, the reality is different. The office staff can bring their personal amenities, drink water in glasses/bottles [while workers have to drink water by putting their mouths right under the taps], and use their mobiles regardless of whether it’s for ‘public’ or ‘private’ matters. They can bring umbrellas and hats [on their walk to the canteen] and are ‘served from head to toe’ [quotation marks in original] (Lao Động 1/6/2010).

Here Thắm gives further details about what she means by the ‘laws’ issued by the company, which look good on a notice board but are empty in practice. She then bitterly contrasts the privileged situation of office staff with the conditions endured by workers, who have to walk to the canteen and crowd each other to have their meal portions distributed. Ultimately, she
writes, workers must ‘swallow their humiliation’ (nuôi từ nhục) in the face of incessant work pressure, disrespect and indignity (Lao Động 1/6/2010).

Another form of discipline, forcing workers to lie about their working conditions, is detailed in four letters. Such discipline is a tactic on the part of managers and supervisors to cover up their unlawful conduct in the presence of customers and labour inspectors. I call this tactic a form of workplace discipline since it is portrayed by the writer as a measure that accompanies some threat of punishment to the workers in the case of non-conformity. The managerial practice of ‘training’ and arranging for workers to tell lies when interviewed by labour specialists and customers has been documented in an ethnographic research on garment workshops in Hà Nội in the early 2000s (Nghiem 2005). But this study provides no detail about workers’ own opinions of such practice. From my reading of the letters, workers seem to exhibit more acute feelings about management’s misconduct in the presence of outsiders with whom the company has a stake. Workers’ inability to speak in their own voices in such circumstances adds to their existing frustration about work pressures and management’s immoral behaviour.

Workers’ accusations about this form of discipline are indirectly informed by law but mostly couched in moralistic language. For instance, one of the letters reads:

> When we were asked questions by the customers or anyone else, the plant managers and supervisors ordered us to lie that we work no more than two hours per day for overtime shifts and we do not work on Sundays. Whoever spoke the truth would have their overtime increased to three hours a day and work all four Sundays, or get sacked.

According to the Labour Code, the maximum overtime per day must not exceed half of the normal working hours for each day. For instance, employees who have an eight-hour working day shall not be asked to do overtime for more than four hours. The employer must also obtain employees’ consent in advance of overtime work. In addition, employees are legally entitled to a minimum of four rest days in a month. While there is no explicit reference to these legal guidelines in the above extract, a general understanding of what constitutes appropriate working time appears through the writer’s recounting of the management’s verbal strategy. The writer sees this strategy as an arbitrary withholding of the ‘truth’ and questions the moral integrity of the managers and supervisors. In situating this extract within the whole letter, it seems to me that, ironically, the lies which workers were forced to tell
becomes the foundation for their complaints about incessant work, which spans 12 hours a day and 30 days a month. In another letter, besides the complaint about coercive working environment, a legal issue about workers’ consent to do overtime also appears in workers’ accusations of managerial treatment:

Although workers are very tired and aggrieved, they still have to work [during lunch time]. If anyone asks us or any customer investigates, we still have to say [that we work] voluntarily. Many times when there were meetings where unions and customers asked workers’ opinions, we were ordered by the upper people to say as they wish rather than telling the truth. Anyone who speaks up their own opinion will be threatened, repressed and schemed to quit the job.

Ultimately, workers have to conform to this kind of tactic due to the threat to their employment status. If threats to subsistence were a major cause of popular resistance among peasants in the 20th century (Scott 1976) and Chinese state workers bearing the brunt of economic reform in the 21st century (Chen 2000), in this case the fear of losing one’s income and falling below subsistence has ironically served to entrench managerial power and hindered workers’ intent to resist. There are striking similarities regarding power and inequality between the workplace situations of these Vietnamese workers and employees facing violation of their leave rights in the US, as described in a case study by Albiston (2005). Most of the latter opted to avoid confrontation by quitting or dropping their cases. However, in the Vietnamese context, managerial practices have served to generate both obedience and resistance. As can be inferred from the letters, workers’ resistance is aimed at regaining moral integrity at work, so that they can continue working without being subject to an exploitative relationship with management.

Decent and fair wages

Wages have been the most pressing issue in labour relations in Vietnam (Tran 2007, Siu and Chan 2015) and, as discussed above, the most common reason for factory strikes. I thus expect that wage demands would make up the largest group in the collected letters; indeed, they are the third common source of grievances. It is possible that, as a pressing issue that is closely linked to workers’ welfare, most wage-related grievances have been taken to the streets by the workers in the hope of putting pressure on management and triggering their immediate response. In the letters, wage-related grievances include those relating to under-payment, withholding of wages and companies’ failure to raise wages. While the state and
union officials tend to attribute wage-related demands to companies’ non-compliance with labour law and the government’s minimum wage policy, most complaint writers have different justifications for their demands. Based on their justifications, I classify workers’ demands into two categories: for ‘decent wages’ and for ‘fair wages.’

Demands for ‘decent wages’ are based upon workers’ living needs. My conceptualisation here is drawn from the International Labour Organisation (ILO)’s ‘decent work agenda,’ which advocates for an employee’s income that ensures ‘security in the workplace and social protection for their families’ (ILO 2016). An income earned from decent work should suffice to meet the living standards of employees and their families, and especially in developing countries, prevent them from falling below the poverty line (ILO 2012: 19). In Vietnam, a decent wage must be distinguished from the minimum wage, which, according to VGCL surveys, only satisfies 80 percent of minimum living needs (cited in Lao Động 2/8/2014).

Five letters revolve around the demand and concern for a decent wage. For instance, in the following example, the complainants draw attention to the difficulty of maintaining workers’ livelihoods on their low incomes and with delays in wage payments:

We were paid by piece rate. On that date the company handed out an order. The quota given by the company was too high, while the rate per unit was low. The earnings would not have been sufficient for us to get by in our daily lives. We were also unable to complete that quota.

Today 10/4/2014 is pay day, but the company informed us that the wages of 10 people with resignation letters would be withheld until 18/4/2014. In our lives, we brothers and sisters depend on the monthly incomes earned by our tears and sweat. Now that the company withholds our wages, how can we afford to pay for our rent, food, children’s school fees…?

It is clear from this letter that the writer and his/her co-workers are migrants from the countryside to industrial and urban areas. Most of these migrant workers live in private rental units, which are often in squalid condition but cost a substantial proportion of their monthly income (Trần 2013). Information obtained from my interviewees and key informants suggests that the rent in Đồng Nai ranges from 800,000 dong to 1.2 million dong per month, taking up approximately 25 to 30 percent of a worker’s average income of 4 million dong. As in the extract, workers’ reliance on their income from one month to another demonstrates their precarious living conditions and limited savings.
The way the workers frame their demands here echoes the ethics of subsistence that prevails in pre-capitalist peasant society (Scott 1976). Similar to peasants who rebelled against their landlords when their minimum livelihoods were threatened, factory workers write and lodge their complaints against management when their basic needs are not secured. Besides the explicit rhetorical question in the above extract, workers’ living needs also manifest in references in other letters to the need for ‘our rice and clothes’ (vì mìng com manh áo), ‘taking care of our family,’ and ‘a stable income.’ Paradoxically, as shown in the preceding sub-section, these basic needs can also account for workers’ silence and obedience in the face of managerial discipline and threats.

The behaviour of all writers discussed so far in this chapter fits well with Felstiner, Abel and Sarat’s definition of ‘blaming,’ that is, a behaviour in which ‘a person attributes an injury to the fault’ of another individual or entity, and ‘claiming’ (1980-1981: 634-635), when he or she voices it to the responsible entity and demands remedial actions. Whilst Felstiner et. al. illustrate their concepts with an incident that involved injuries, the authors of these letters faced threats to livelihood, physical harm to their wellbeing, or psychological pressure. The consequent blaming and claiming they engaged in did not involve reference to injury, but did refer to threats and harm to their subsistence.

The second category of wage-related demands – for a fair wage – appears in three letters.26 In the broader context, while the notion of a decent wage is popular in Vietnamese official and public discourse, especially around the time of the government’s minimum wage bargaining, there is hardly any mention or discussion of a fair wage. In my textual analysis of the complaint letters, I did not particularly search for the word ‘fair,’ ‘equitable’ or ‘just’ (công bằng), but underlined lines in which the writers mentioned, complained, or made claims about their wages. Workers’ appeals for a fair wage are not explicit in the letters but can be surmised from their description of what they deem to be the opposite – unfair wages – and their reasoning that a higher wage (rise) is warranted. I therefore consider the notion of a ‘fair wage’ to be subjective and contingent on individual workers’ perceptions of their working conditions. It goes beyond a plea for subsistence needs.

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26 These are the three ‘request letters’ that I mentioned earlier when describing the letters.
The following extract exemplifies a demand for a fair wage. Here complainants reason that they should be entitled to a wage rise due to the intensity of work: the more time and physical effort one spends on tasks, the higher wage one deserves. The writer highlights that workers’ contribution to the business is no less important than office staff’s and calls for their equal treatment:

Now the company only raises wages of office staff but not of workers. Officers only take orders and monitor workers, while workers do physical labour and frequently work overtime. So why did they have their wages raised but not workers? [underlining in original]

In another letter, delivered in an even more assertive tone, the writer justifies workers’ demand for a wage rise by pointing to the skill difference between workers in two different sections. As stated in Article 5 of the Labour Code, workers shall have the right to receive a wage which is commensurate with their occupational skills and knowledge on the basis of an agreement reached with the employer. This article further implies employees’ right to negotiate their wages with their employer. While the workers’ demand in the following extract is sanctioned in the Labour Code, the writer opts not to highlight this, but instead presents another argument:

The wage rise level of the project section is very low compared to that of the production section. The project section includes labourers who have been trained and have technical skills, but (now) receive the same wage as those in the production section. We find that the wage rise level is not reasonable.

Instead of relying on the Labour Code or contractual agreements, these workers leverage their own judgements to make a command that the management should remunerate them fairly for their skill and labour and imply a sense of distributive justice. In making demands for fair payment, complainants position themselves and their fellow workers as parties in a bargaining situation with management. They therefore seek to either present persuasive and assertive statements, albeit somehow presenting their claims in a hesitant and rhetorical manner. The delivery of these letters is in stark contrast to pleas for subsistence delivered in a desperate and pitiful manner. Whilst the emergence of disputes described in Felstiner, Abel and Sarat’s original study is preceded by an injury or harmful incident, the above disputes in relation to fair wages are not, but are instead foregrounded by judgements of perceived unfairness.
While above I distinguished between two types of wage-related demand, the following letter provides an illustration that the line between them is not so clear-cut. This letter contains a demand for a higher wage rise but the justification is about essential aspects of workers’ living needs. The writer in this case starts with a short, sharp statement: ‘The company’s decision on our wage rise and reward is not reasonable and we totally disagree,’ before explaining at length about workers’ dissatisfaction. Among three reasons centreing on the company’s profits, inflation, and a delay of the wage rise in the previous year, the second reason is given the most space and articulation by the writer:

We think that we, as consumers, are more affected [than the business] by the rising inflation: for instance, while in early 2012, it cost 18,000 dong for 10 eggs, the price now has gone up to 30,000 to 35,000 dong.

Inflation is the common market problem facing all enterprises and factories, but it does not mean that all of them have refused to raise wages or have cut employees’ reward like our company. […] We think that this year the company should give us a higher wage rise to compensate for inflation like other companies.

Similar to other pleas for a decent wage, the writer also points to workers’ living expenses but focuses on reasoning rather than invoking sentiment from the reader. In describing themselves as consumers and citing the price of eggs – a basic food item in almost all households – as an example, these workers emphasise their wishes for a wage rise that allows them to fulfil their everyday needs. In this instance, while a large part of the letter is framed as a form of collective bargaining and negotiation between workers and management, their argument boils down to a demand for a decent wage.

What is also interesting about this letter is workers’ clearly articulated claim for a right to fairer remuneration. As a whole, this letter is a tactical combination of different manners and modes of reasoning: a wage bargain on the basis of consumption and fair reward, and a request for decent treatment based on mutual interests and emotional binding.

We always try our best to fulfil our task because at heart we think that by producing goods for the company, we also do good to ourselves. We consider the company like our family. Why don’t we have the right to benefit from what the company has achieved?
The writer’s demand for rights effectively invokes the norm of reciprocal obligation, that is, ‘an obligation to return a gift or service’ (Scott 1976: 167) that one previously received. The norm of reciprocity is claimed by James Scott to exist in all traditional societies, including the peasant societies he studied in 20th century Southeast Asia. It is a crucial part of a range of social arrangements that determine how rural people treat each other and how they expect to be treated by their fellows or other patrons (Scott 1976). In contemporary Vietnamese society, it also has been found to prevail in interpersonal relations and kin networks, for instance, when an individual is expected or obliged to return a favour of a comparatively equivalent nature to the other person (Luong 2016). In practice, one’s judgement of how the favour should be returned is subjective and non-quantifiable, but living up to such mutuality is an important consideration in interpersonal relationships; and in this case, between workers and employers. The material connections between workers and employers are skilfully intertwined with their emotional connections when the writer brings in the image of a family, an embodiment of the most precious relationship in Vietnamese society.

Another exception to the above classification is seen in the published letter. While raising the wage issue, the writer also weaves her complaint in with other workplace problems and, in particular, a twisted rhetorical reference to ‘law.’

We don’t know whether our wages and insurance are calculated correctly, but we only know that, after receiving wages, many workers quit their jobs. Some workers complain that wages are calculated incorrectly. The company issued a wage table that I myself only saw ‘for the very first time’ [quotation marks in original]. Workers cannot dispute it because they do not know what the wage table regulated by the State looks like. My cousin raised a question and received a cold answer: ‘That is the company law.’ Which law is it? (Lao Động 1/6/2010)

The extract makes clear that workers are not knowledgeable about labour law, but hints at their curiosity to know what it is and how it works. Such law stands in contrast with another ‘law,’ which is associated with the manager’s language and arbitrary treatment of workers. If the first law would allow workers to determine what is right and wrong about the wage payment, reference to the second ‘law’ is sarcastically employed to mean injustice. As such, while the writer hints at the possibility that a working knowledge of labour law might give them a better chance to review the income they receive, she later makes void that possibility. The rhetorical question at the end strikingly conveys how lost she feels when the law that is
supposed to protect her and her fellow workers is replaced with another law that perpetuates their desperation. The ‘cold answer’ that workers receive seems to put an end to all queries, as it shows that workers eventually lose out regardless of whether or not they know about law or resist on the basis of it.

Female workers’ special rights and their abuses

Four complaint letters were related specifically to female workers, who are legally entitled to special rights. As noted in Chapter 1, the Labour Code has a separate chapter that entitles these workers to rights such as maternity leave, nursing and rest time. Article 154 stipulates that employers are obliged to promote gender equality in the workplace, from recruitment to employment and training. Article 155 includes the following further provisions for female workers who are in the later stage of their pregnancy or are nursing a child under 12 months of age:

- They are not required to do night work or overtime.
- They may transfer to lighter tasks, or have their daily working hours reduced by one hour while receiving the full wage.
- They are exempt from any labour disciplinary measures.

However, in practice, these entitlements are often neglected and abused by management. The attention to women workers’ parental duties in the making of the law ironically generates injustice in its implementation rather than promote gender equality.

Two letters raise the problem of illegal dismissals of female workers. According to the Labour Code, labour contracts take the form of either a definite or indefinite term. Definite term contracts have a duration of 12 to 36 months and may be renewed once. If the workers are employed beyond two terms of up to 36 months, then the contract becomes an indefinite one. For instance, a worker enters a company with a one-year contract may then have his/her contract renewed for another year, and then after the renewal, becomes ‘indefinitely’ employed. Article 155 specifies that the employer must not dismiss a female employee or unilaterally terminate her contract due to her marriage, pregnancy, maternity leave, or her nursing, unless the employer encounters exceptional circumstances and has to cease operating. However, workers’ complaint letters in the two following companies indicate that
female workers often find it difficult to achieve the indefinite contracts to which they were legally entitled:

Letter A: Some female workers have been employed for two years and also paid for social insurance during this time. They have not violated any rule and they work hard. Yet when they get pregnant or when the company knows that they are nursing small children, the company immediately terminates their contracts. This makes life very hard for many female workers: they still have to pay their rent and take care of the kids without any job. [italics added]

Letter B: Some pregnant women worked for two years and were about to get their long-term contracts. When their pregnancy reached seven or eight months, the company ended their contracts, meaning that they will give birth without receiving any maternity benefits. […] Meanwhile, the company is employing new workers every day. That conduct is inhumane and we workers are very angry. [italics added]

The failure to renew female workers’ contracts exemplifies the breach of articles prohibiting discrimination against pregnant and nursing women; however, the writers consider the situations as ethically wrong rather than unlawful. As can be seen from these short extracts, the complainants employ certain knowledge about the contractual provisions to paint a larger picture about the fates of those who have unfairly lost their jobs while taking on their care duties. Compared to other writers discussed so far, whose grievances and judgements stem from lay morality and their subjective views of justice, these workers derive their judgements of management’s conduct from labour law. This example suggests the blurred boundary between law and morality, when certain understandings and practices informed by law contribute to shaping workers’ sense of unfairness and their moral call for the state’s and union’s intervention. Complaint writers also perceive of female workers’ mistreatment as shared injustice that frustrates other workers in the same workplaces. The writers have effectively shifted female workers’ problems from the individual to the collective on the ground of subsistence ethics.

In addition, two letters complain that female workers nursing small children are not allowed to have an extra hour break time. In one of these two letters, there is another complaint about the company’s harsh control of toilet breaks, causing discomfort for all, but especially pregnant women workers. These complaints show that the parental duties of female workers
have been denied or neglected due to the company management’s efforts to maximise labour power.

Similar to previous studies on workers’ complaint letters in China (Thireau and Hua, 2003) and on their protest language (Pun 2016), my analysis reveals that writers who invoke law tend to do so not in order to construct a legal claim or argument but to amplify their own expressions of what is fair or socially acceptable. Chinese and Vietnamese workers invoke values and language embedded in socialist discourse, moral economy, and shared behavioural norms, in their respective settings. The way in which workers support their claims suggests broader understandings of workplace ethics beyond labour law that management, and indirectly the state, have abused or overlooked. Different from Thireau and Hua, whose analysis of law mainly focuses on instances when law or the Labour Law are explicit in complaint letters, I have paid greater attention to instances where law is not referred to explicitly in letters, but where it is clear that workers’ general understanding of appropriate working hours, demands for a wage rise following the state’s decision, and their explanation of contractual entitlements, is derived from relevant articles and terms in the Labour Code.

In addition to showing that workers’ use of law is varied, my analysis suggests two further functions and effects of law. Firstly, law has become a moral resource for workers to evaluate workplace practices, when certain aspects of it are enacted in their lay language andarticulations. Without the introduction of the Labour Code and its uneven or failed implementation across enterprises, these workers might have taken their exploitative and unfair situations for granted, rather than challenging or viewing them as problematic in their letters. It is therefore important to acknowledge that, despite the gap in its implementation, law still contributes to workers’ moral reasoning about their grievances and demands. In this regard, and secondly, if we accept Albiston and Leachman’s conceptualisation of social change as a process that involves the reconfiguration of ‘social practices and interactions’ (2015: 543), labour law in Vietnam has already contributed to social change.

The letters’ final requests and demands for rights

In their requests for complaint resolution at the end of the letters, only two complaint writers make explicit reference to the Labour Code, with one of them demanding a proper enforcement of law and the other making a general appeal for help. The rest convey their
expectation that the unions and the state will carry out their moral obligations to workers and show compassion for their hardship. This expectation echoes the state’s and unions’ propaganda and rhetoric that they strive to ‘take care of’ (chăm lo) workers’ lives and more broadly reflects perceptions of a social contract:

I want to ask the state departments: if your children also worked as factory workers and were exploited and mistreated like we were, then would your hearts feel sore and touched? I therefore beg you to come to our company and investigate the managers and line leaders who abused their power and position and treated their workers in a heartless way.

Apart from this touching plea, most other complainants put their requests in brief: ‘We request the unions/authorities/state departments to protect and help us,’ ‘intervene in a timely manner,’ or ‘protect the rights and interests of employees.’ Placing their faith in the power to intervene of a third party, that is, the union and state authorities, enables workers to find some way to break free of the cycle of being coerced to work, forced to lie, and threatened with being sacked. With regard to letters that voice the threat of managerial retaliation or repression, the writers do not just ask for a solution to the complaints and frustration being raised; they also ask for protection against such threat. In doing so, complainants accept a paternalistic relationship with the state (Goluboff 1999: 738) and in turn hold the state accountable for their problems.

The published letter ends in a similarly touching voice, yet it also details workers’ actions in the face of mistreatment and especially the writer’s determination to seek justice.

As it is so unfair, some workers stopped work but the company still refused to address their problem. These workers then decided to quit the company and accepted that they would lose some days’ wages and even their social insurance booklet.27

There are still many other injustices that we have to endure. We used to struggle and go on strike but nothing has changed…. My heart is not at ease. I used to approach the Đồng Nai newspaper, Người Lao Động (The Labourer), and Lao Động for their legal assistance, but have not received any response (Lao Động 1/6/2010).

As can be seen from these paragraphs, workers’ resistance against management includes work stoppage, strike action and an appeal to the media; among these actions, only the last

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27 A social insurance booklet is a record of employees’ and employers’ insurance contribution, which is issued by the state to individual employees but is kept by the employers during the course of employment.
suggests a possibility of employing legal procedure. It seems that when workers have exhausted actions that bypass or go against the law, acting within the law then becomes a possible option, albeit one that has yet to be successful. Thắm again finds herself caught in a cycle of paradoxes: after withstanding all the company’s ‘laws’ and almost giving up on her intention to know about the State’s law, she had no other choice but to reach out for the latter. Even so, her last resort does not necessarily denote a belief in legal justice – it is a means to regain workers’ dignity and perhaps put her heart back at ease. The unresponsiveness of the newspapers following Thắm’s request for their legal assistance seems to be a blow to her hope for justice, before she tried out the last resort and appealed to the VGCL Chairman.

Thắm also raises a passionate and desperate demand for workers’ rights in a much clearer way than all the other collected letters. The meaning of these rights should be analysed alongside the writer’s portrayal of workers’ experiences throughout the letter and her self-ascription at the start. Initially she refers to herself and her fellows as ‘employees,’ ‘workers,’ and ‘citizens,’ yet the feelings of resentment become so strong in the middle of the letter that she is led to wonder whether the company sees workers as ‘human beings’ at all. Her demands, therefore, are demands for the very basic human rights that constitute the core elements of social justice:

I and other workers here hope that you understand that our rights to equality, our rights to be respected, and our rights to life (quyền nhân sinh) are being abused by the employer. We don’t know what to do, to struggle or not to struggle. What would be a rightful struggle, who would we trust and rely on? (Lao Động 1/6/2010)

The ‘rights’ that Thắm calls for are more basic and broader than the legal rights designated in the labour law regime. The first demand resonates with basic citizens’ rights endorsed in the Vietnamese Constitution, that is, ‘all citizens are equal before the law’ and ‘are free from discrimination in all aspects of political, economic, civil, cultural and social lives’ (Chapter II, Article 16). Citizens’ honour and dignity shall also be protected under the law and all citizens are obligated to respect the rights of other people (Chapter II, Articles 15 and 20). As a Vietnamese citizen, it is likely that she has learned from these constitutional values to make sense of what happened on the shop floor as problematic infringements of workers’ basic (citizenship) rights. Her first call for ‘equality’ (bình đẳng) is a call for fair treatment that should be exercised and enjoyed by all people, regardless of their positions in the company, and in all circumstances, from the break time to the daily examination of
production quotas. In my understanding, the right to equality accompanies the right to be respected, Thâm’s second demand, which is a core principle of interpersonal relationships in Vietnamese society.\(^{28}\)

Thâm’s third demand – the right to life – is interesting, as the original phrase ‘quyền nhân sinh’ is quite unpopular in Vietnamese official and lay languages. The word ‘nhân sinh’ by itself is nonetheless popular and means a human’s life in general, or the way in which one lives. The ideal of the right to life, in my view, is closely related to the fundamental human rights that are universally recognised and endorsed in the Vietnamese Constitution. Put together, Thâm’s demands can be seen to derive from different but interrelated understandings of rights. The rhetorical question about a rightful struggle that follows conveys Thâm’s moral imperative to overcome existing sufferings and a feeling of hopelessness. The rightful struggle that she refers to may not be a struggle that the law allows, but an ongoing moral struggle to reach hearts and minds and regain social justice for workers.

The moral values implicit in Thâm’s demands for equal treatment and respect also resonate with some basic principles of labour relations given in the Labour Code. As stated in Article 6, one of the employer’s obligations is to ‘respect the honour and dignity of employees.’ Article 7 designates that labour relations shall be developed on the basis of ‘voluntary commitment, good faith, equality, cooperation, and mutual respect of lawful rights and interests of all parties.’ The rights-oriented language in this letter does not include reference to the Labour Code nor employees’ statutory rights, yet it effectively covers the values embedded within the articles mentioned above. Her demands attest to an ideal of rights that is not (yet) explicitly granted within the Labour Code but is implicated in the principles governing employment relationships. Workers’ aspirations for respectful treatment, equality and dignity can also be seen in other letters, although they are couched mostly in lay expressions of (un)fairness rather than rights-based assertions.

Thâm’s appeal for rights provides an illustration of ‘popular rights discourse,’ a term suggested by George Lovell (2012: 201 [original emphasis]) in his revisiting of the socio-legal debate on American rights talk. The author calls for an exploration of rights beyond official discourse and legal institutions – the sites through which most scholars examine

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\(^{28}\) This core principle of respect indeed applies in interpersonal relationships in all societies.
rights talk and its implications for political and social change. Popular rights discourse is
found in lay citizens’ claims and expressions, which reflect their experiences with everyday
situations or absorption of different political rhetoric and ideas (Lovell 2012: 201-202). To
illustrate, in his book on American citizens’ complaint letters to the Department of Justice in
the late 1930s and 1940s, Lovell found that some writers’ claims for rights deviate from
rights recognised by government officials or endorsed through lawsuits. Those rights claims
were constructed, for instance, from citizens’ invocation of democratic values, or their
experiences with welfare access and employment (Lovell 2012: 111-116). Similarly, Thasmine’s
rights claims clearly deviate from the official discourse on workers’ rights as legal
entitlements that are separate from interests. They are instead based on her experiences with
maltreatment and discipline on the shop floor and are likely to have been influenced by both
the Constitution and fundamental shared norms within society.

Ultimately, the resolution of issues raised within the letters and workers’ situation afterwards
are unclear to me. I am only able to trace in some detail how the VGCL Chairman responded
and reacted to Thasmine’s appeal, as this detail was published in Lao Động under the same
headline and following Thasmine’s letter. In his response of consolation, the VGCL Chairman
cited the state’s slogan ‘A rich people, a strong, democratic, equal and civilized nation,’ and
acknowledged that the impingement of workers’ rights is ‘unacceptable’ (Lao Động 1/6/2010). He hinted at his intention to work with the provincial and municipal unions to
rectify the company’s treatment of its workers. The Chairman also encouraged Thasmine to
consider nominating herself for a position within her company’s union. Lao Động also
reported the Chairman’s visit to the company, accompanied by a team of local union officials,
under the headline ‘It is obligatory to respect workers’ dignity’ (21/6/2010). In their visit, the
Chairman and other officials talked to workers in the company regarding issues raised in
Thasmine’s letter. There is no mention of Thasmine herself in the news. The visiting team led by the
Chairman found that the company management had complied with law ‘at a minimum level
and in a cosmetic manner’ (Lao Động 21/6/2010) and made further suggestions to the
company to improve workers’ conditions. The Chairman’s intervention is a welcoming sign
of workers’ voices being heard and acted upon, even though it is still unclear what happened
to Thasmine after the publication of her letter.
The role of legal aid in complaint lodgement

This section looks at a case of workers’ complaint lodgement that involves the union’s legal assistance and examines whether the provision of such assistance makes any difference to the way law is used and framed in workers’ letters. The Legal Aid Centre (LAC), which belongs to the provincial labour federation, provides a pathway to workers’ lodgement of their complaints to the state and union. Established in 1993, the LAC offers free legal advice and assistance to workers, mostly about grievances of an individual nature, such as the company’s illegal termination of contracts, unemployment benefits, and social insurance. According to the chief lawyer and director of the centre, there are sometimes queries about collective grievances relating to company policies. In such instances, the lawyer explains to workers their entitlements according to state law and policy, and helps them write and bring their grievances to the official unions or the state’s labour authority. When workers intend to go on strike, he explains to them the legal regulations in relation to strikes and directs them to lodge their complaints. Giving legal advice is apparently the only action taken by the lawyer and LAC staff who then have little influence on workers’ subsequent actions.

It is therefore difficult to empirically prove the relationship between the LAC’s functions and aggrieved workers’ engagement with law. Even though LAC staff have engaged, to some extent, in workers’ complaint writing, it is impossible to trace and verify this from the previous complaint letters to union offices. My randomly recruited participants also did not know of the LAC. Coincidentally, when I conducted my second field trip in December 2015, I managed to collect details of a labour dispute case that had happened three weeks before then and had the LAC’s involvement. This case received a wide media coverage through which I obtained most of the information that follows.

In November 2015, more than 1800 workers in a Korean company named Yupoong protested against the company’s termination of their contracts. The protest occurred two months after one of its workshops was accidentally burnt down (Lao Động 10/11/2015). The damage meant that production in the adjacent workshop could not continue; therefore, the company decided to end contracts of workers in both of these workshops. Before issuing its decision, the management had sought official guidance from the Industrial Zone Authority (IZA) as to how to lawfully handle the problem. According to the Labour Code, an employer can unilaterally terminate employees’ contracts in cases of fire or disasters, after he or she has
exhausted other means to recover the damages. The termination of workers’ contracts in Yupoong followed the legal procedures with advance notice, and the manager also announced that they would pay allowances, unpaid leave, and social insurance premiums for pregnant workers. Workers were angry and demanded that (1) the company pay a higher allowance to give them time to find a new job, or (2) they be allowed to stay home and receive no pay until the company fully recovered its production (Vietnam Television Online News 13/11/2015).

Meanwhile, dismissed workers also sent many appeals to the state authorities. Two core workers\textsuperscript{29} referred some complainants to the LAC, and a legal advisor helped them to write their letters to the Department of Labour (Tuổi Trẻ Online 9/11/2015). With some help from a labour officer, I managed to obtain two letters at the department: one typed and one hand-written. The hand-written one was entitled ‘Letter of plea’ and the writer identified himself/herself as a representative of all employees in the company. The letter was filled with description of the desperation that workers felt after being unilaterally dismissed:

We workers have contributed our sweat and labour to the company [and its affiliated branches in other industrial zones]. We have contributed to the company since we were young, for 10 to 13 years. Now when we are old, the company ends our contracts. Now where can we look for jobs, especially those of us who are above 40 years old?

The expressions here are similar to the verbal accounts of workers in the food-processing company in Chapter 2. Workers’ contribution to the business and their term of employment implies a kind of service that deserves the employer’s acknowledgement. They thus expect the management to uphold its reciprocal obligation simply by allowing workers to stay in the jobs. The termination of workers’ contracts, therefore, was viewed by the workers as an unfair dismissal of their long service and an abandonment of the company’s obligations to workers as they grow old. By posing the rhetorical question about their uncertainty to switch jobs afterwards, workers indirectly hold the company accountable for their employment. Workers’ appeal to the management for employment guarantee in this case is based on the perceived injustice of a failure to return one’s favour, underpinned by a norm of reciprocity.

\textsuperscript{29} These core workers, whose roles will be discussed in the next chapter, have a good relationship with the LAC.
As can be expected, the writers move on to describing workers’ struggle to get by when their main source of income is lost:

Meanwhile we are facing difficult situations: some have small children, some are pregnant, and some are widows taking care of several children. Now, even if the company re-employs us but pays with a new wage level,\textsuperscript{30} it would not be enough for us to get by in our lives. […]

Now we are at a disadvantage and losing all our rights and interests. We ask the authorities to please save us so that we can have stable jobs and receive the wage level as per our previous long-term contracts.

The tone of this letter is similar to previous complaint letters when the writers gave a sketch of their living conditions and called upon the authorities for salvation. The writers’ use of ‘rights and interests’ in this case is also the same as that of respondent workers covered in Chapter 2: the apparently legalistic terms are deployed to legitimate their demand for a fair wage and a decent job. In the last line, the mention of workers’ long-term contracts can either be interpreted as workers’ attempts to justify their legal employment status, or as a rhetorical device to bolster their previous demand. My reading of the whole letter would suggest the latter.

The second typed letter is entitled ‘Letter requesting urgent intervention’ in the names of workers in the workshop that was not burnt down but whose production was negatively affected by the fire. The letter was not headed by any specific writer but contained numerous signatures and names at the end of the page. The letter at the start asserted the legal employment relationship and work positions of appealing workers: ‘…we have worked as short as 1 year and as long as 13 years; most of us have permanent contracts and the rest have definite contracts of 12 months. We are factory workers working in the following sections: preparation, cutting and control.’

Compared to the previous one, this letter clearly points out the inconsistency in the company’s conduct:

According to the official document number 1651/KCNDN-LD, […] only workshop 1 halted production. In reality, other production processes still run as normal and machines in workshop 2 were still in good condition. Yet the company suspended our

\textsuperscript{30} This means a wage level for newcomers, which is much lower than the wage level that senior workers have been paid during their employment.
work [of workers in workshop 2] then took its orders to be assembled in other companies… This is not reasonable.

Now we write this letter to request the Department of Labour to intervene in this matter so that the company will allocate work for us. Most of us are migrant workers from other provinces and now our living conditions are very tough.

In making an explicit reference to an official document that provides for the company’s practice, the writer came close to constructing a legal case for workers’ demands. However, the reasoning that follows shifts towards the moral sphere, though expressed in a much more measured manner than previous workers’ letters. While the LAC has claimed to help workers understand and express their grievances according to labour law, in this case it seems to opt for an approach based on ‘reason and sentiment’ (lý và tình) (Gillespie 2011: 248). This is a popular approach in resolving civil conflicts in Vietnam, which combines an application of formal rules with other ethical considerations. By bringing in workers’ desperate situation to the state’s formal avenue of appeal, it seems that the legal advisor behind this letter believes that it might serve as a moral trigger for state intervention when a legal judgement might possibly fail.

Despite their differences, both typed and handwritten letters evoke the workers’ right to a decent wage and communicate workers’ living conditions in the hope of the authorities’ intervention. This subsequently led to an extra-legal solution coordinated by provincial unions and authorities, after workers’ appeals and their five-day strike failed to sway Yupoong management’s decision. The official unions and IZA tried and succeeded in mobilising nearby companies, which require similar manual skills as Yupoong, to employ the dismissed workers. As an intermediary that helps channel workers’ grievances and demands into the formally sanctioned bodies, the LAC has moved freely between legal and moral ways of framing to assist their clients. The LAC’s approach and the resolution of the dispute demonstrate that an appeal through compassion may be more effective in delivering justice than a rigid legal mobilisation.

**Conclusion**

This chapter has examined to what extent and how aggrieved workers turn to labour law in the writing of their letters lodged with union offices. The letters at first sight reveal that management’s failure to properly implement labour law is a factor that contributes to
workers’ grievances and generates their resistance. The letters show that, in workers’ experience on the shop floor, legal provisions supposed to protect their interests have been replaced with arbitrary rules that have perpetuated exploitation and silenced their voices. However, most letter writers do not judge managerial conduct nor frame workers’ demands explicitly in terms of labour law, but through the lens of conscience and morality. Workers who adopt language from the Labour Code attempt to emphasise their expressions of immoral treatment rather than make a legal case. The way in which these claims are framed suggests workers’ consciousness of workplace ethics that the state, union and management have tended to abuse and overlook.

My analysis of the letters reveals that writers have employed and combined different narratives and rhetorical devices. Writers go from depicting workers’ hardship and destitution in an emotional manner to bargaining and negotiating for a fair reward. These modes of narrative are underpinned and accompanied by different values concerning workers’ relationship with the state and management: the moral economy value that workers’ subsistence shall be guaranteed and reciprocal obligations shall be upheld, and the ideal of social equality. While the writers’ expressions of these values lack reference to the Labour Code, we need to acknowledge that the Code contains provisions and principles that reflect the same values, such as a guarantee of employees’ and their families’ minimum livelihoods based on the minimum wage, appropriate remuneration based on their skills, and employers’ obligations to respect and honour employees’ dignity. Workers’ moral understandings of justice therefore resonate with the law rather than being opposed to or distinct from it.

Similar to Chapter 2, the evidence and findings from this chapter extend and build upon the moral economy framework by, on the one hand, highlighting the eminence of longstanding social norms and arrangements, and on the other, underscoring the relevance of Vietnam’s relatively new labour law in shaping individuals’ views of justice. Already, it shows, labour law has contributed to social change in Vietnam by informing workers’ perceptions of desirable or problematic workplace practices and their consequent acts of resistance.

This chapter’s findings also stress the need for the consideration of socio-cultural norms in the analysis of state-labour relations in Vietnam. In particular, they present a critique of Marxist-inspired studies, which consider such relations as inherently antagonistic. This
chapter suggests that the way in which worker-writers appeal and relate to the state indicates a paternalistic relationship bound by socialist ideology and citizenship.

The next chapter also looks at workers’ resistance that takes place within state-sanctioned channels, providing further insights into workers’ legal consciousness through their experiences of the labour law regime before and after their complaint lodgment.
CHAPTER 4: CORE WORKERS’ LEGAL CONSCIOUSNESS AND RESISTANCE

Introduction

This chapter examines the role of law in labour resistance through the actions of ‘core workers’, who are factory workers recruited and trained by Legal Aid Centre’s lawyers under a legal aid project once funded by Oxfam Solidarity Belgium in Đồng Nai province. The core workers employ their legal knowledge to provide legal assistance to ordinary factory workers in their residential areas, at the same time engaging with law enforcement institutions to demand justice for themselves and their fellow workers. Core workers’ background of legal training and their subsequent actions allow for a thorough examination of how legal aid, and values and practices derived from the Labour Code, all contribute to labour resistance. Compared to the previous chapters, this chapter sheds more light on how legal aid, in particular, makes a difference to workers’ views of rights, law and justice, and enables their resistance.

To date, there has been very little research on the link between legal aid activities and workers’ resistance in Vietnam. However, in her recent book Ties that Bind (2013), Angie Trần has a brief discussion on the union’s provision of legal aid and social support in workers’ residential areas near industrial zones and how it has contributed to workers’ mobilisation (Trần 2013: 243). In Hồ Chí Minh City for instance, official unions have established so-called ‘workers’ self-managed units’ (tổ tự quản công nhân), which pay periodic visits to workers’ rental areas. The aim of these visits is not only to inform workers about labour law, but also to channel their grievances to the unions and identify and pre-empt underground labour activism. Trần finds that workers’ self-managed units (mainly) serve the interests of the state and management in containing labour activism and strikes, which in her view represent a critical moment of workers’ bonding and shared interests (p.2). Trần still recognises the benefit of those self-managed units in bringing labour law closer to ordinary workers and helping them understand their legal rights. However, she does not investigate how legal education contributes to raising workers’ consciousness of rights and how their consciousness influences the way in which they perceive justice and frame their workplace problems.
Academic debates on legal aid and its contribution to labour resistance in China have been more lively and contested. Legal aid is often run by domestic and foreign-funded non-governmental organisations, which are diverse in their activities and in their relationships with the unions and the state. Several scholars have recognised the role of legal aid in helping disadvantaged workers to understand their legal rights, the infringement of those rights by management, and/or seek their redress through the courts (Gallagher 2006, Friedman 2009, Becker 2013). Other scholars nonetheless caution that legal aid agencies are only reactive, that is, they function in response to violations of law rather than proactively advancing workers’ rights and interests beyond those granted by law (Chan and Siu 2012).

In examining in detail the case of a legal aid project, this chapter seeks to shed light on its role in raising workers’ consciousness and enabling their resistance, and contribute to the existing debate on legal aid in post-socialist countries.

The rest of this chapter is structured as follows. The next section provides an outline of the core workers project in Đồng Nai province from 2009 to 2014. This is followed by a discussion of the significance of legal aid and core workers’ views about the labour law, in comparison with ordinary workers’ views. The last section investigates the cases of four core workers who have deployed the law in different ways to speak out and act against cases of legal violations in their own companies.

Further analysis of core workers’ resistance is informed by the conceptual lens of legal consciousness. I understand legal consciousness as the way in which people ‘draw on legal discourse to construct their understanding of and relation to the social world’ (Albiston 2006: 56), and ‘make sense of the law and legal institutions’ (Ewick & Silbey 1992: 734). As outlined in the Introduction, scholars in this strand of inquiry viewed consciousness as dynamic, multi-faceted, and subjected to change according to people’s social experiences, relationships and activities. This concept therefore is broader than the notion of rights consciousness widely seen in rightful resistance literature, since it also incorporates the social

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31 These organisations often face burdensome registration procedures, scant funding and close monitoring from the state (Becker 2014, Chan 2012). They were set up by former migrant workers and professionals concerned with workers’ rights. While organisations that vocally advocate for workers’ rights and collective actions are co-opted and repressed by the state, others which provide social welfare services that serve the state’s interests work in tandem with the state and union. These organisations provide disadvantaged workers with free legal assistance, such as advising them on claim-making strategies, and social welfare support (Friedman 2009; Chan, C. 2012; Becker 2014).
environments in which rights understandings and perceptions take root, develop and change. My discussion on core workers’ resistance will mainly revolve around the following sub-questions:

- What are the effects of legal aid training on core workers’ opinions and attitudes towards law, justice and workers’ resistance? How do their opinions and attitudes differ from those of ordinary workers?
- How does legal aid influence core workers’ action or inaction towards management abuses?
- In their demands and actions for justice, how do core workers turn to the law? How can we make sense of core workers’ legal consciousness through their actions and experience with the law and its institutions?

Core workers project

Overview of the Legal Aid Centre

The Legal Aid Centre (LAC) was established in 1993. It belongs to the Đồng Nai Labour Federation (DNLF) and has its own office located next to the Labour Federation. The Centre now has two lawyers, three legal counsellors, an accountant and a treasurer, and a few volunteer legal counsellors. Except for the accountant and treasurer, all staff and volunteers at the centre have a bachelor degree in law. The lawyers and most legal counsellors have had more than 10 years of experience working in law-related professions. Despite its small capacity, the Centre offers services to a range of groups: employees, both within and outside Đồng Nai province, business people, and union officials. It advises on a range of different issues relating to labour, union and civil laws. The LAC is mostly funded by the Labour Federation. The remainder of its funding comes from its legal service fees, collected from the centre’s legal advisory service to businesses and other non-worker citizens, and project cooperation with foreign donors.

The LAC mostly deals with labour grievances of an individual nature, such as the company’s illegal termination of contracts, workplace injuries, workers’ unemployment benefits, and social insurance. Some of its services include: legal consultation in person or by phone, helping workers to write petitions and complaint letters to relevant official bodies, preparing lawsuits and representing workers in courts. LAC lawyers have been given media attention in the local labour newspaper (Đồng Nai Labour News, 2010-2014) for successfully
representing workers in courts, helping them to win their cases, and are especially hailed for their dedication in pursuing cases that lasted for several years. According to the Centre’s report (2013), from 2008 to 2013, 95 per cent of the 475 labour lawsuits it handled resulted in a worker’s win. This high success rate of legal representation is one important factor that, as I will later discuss, shapes the core workers’ belief in using the law as a means for demanding workplace justice.

Core workers’ activities
In 2009, Oxfam Solidarity Belgium initiated and funded the core worker project, to be run mainly by the LAC. The pilot project, entitled ‘Mobile legal aid for migrant workers in Long Bình ward, Biên Hòa city,’ was approved by the People’s Committee. According to a participant worker, Oxfam conducted a survey on workers’ legal knowledge around his neighbourhood areas some time before starting this project. Long Bình ward was the first location selected for a trial of the so-called ‘mobile legal consultation sessions’ (buổi tư vấn pháp luật lưu động). These sessions are mobile in the sense they take place at, and move around, different workers’ rental units. According to the project plan written in 2009, Long Bình ward was chosen as half of more than its 74,700 residents are migrant workers (LAC - Đồng Nai Labour Federation, 30/9/2009). Even though the project’s main targets are migrant workers, the legal sessions are open to all interested local employees in the neighbourhood. The first nine sessions in this area are reported to have attracted more than 800 participants (LAC - Đồng Nai Labour Federation, 30/9/2009).

With very limited staff, the LAC decided to train and enhance a team of so-called ‘core workers’ (công nhân nòng cốt), to help with organising and running legal sessions. The training comprised of two parts: legal knowledge and social skills. The trainings took place either on Saturday evenings or Sunday and lasted from 1.5 up to three hours. The size of each session ranged from 20 up to 40 people. LAC staff and some officials at the provincial labour federation took charge of the legal knowledge training. In each session, the trainers spent about two thirds of the time lecturing about several labour law topics, such as labour contracts, working hours, maternity benefits, social insurance, and labour disputes. The lectures were delivered in a simple and easy-to-understand manner so that core workers could emulate this approach in their future running of legal aid lessons. After the lecture was question and answer time, in which participants were given some problem-solving scenarios
and activities. The training materials for these core workers, which they could take home, included shortened and simplified versions of the Labour Code and Law on Social Insurance. The second part of the training was related to social skills including public speaking, organisation of group activities, and facilitation of group discussion. These sessions were run either by union officials or invited speakers and professionals working in different domestic institutes and social organisations. It took a core worker from two to three months to complete the training before they were ready to become a speaker at the mobile legal aid sessions. Core workers then further consolidated their skills in the process of advising other workers, with assistance from the LAC staff and senior core workers.

The key feature that distinguishes this project from other legal aid activities in other industrial cities and provinces is that it is run by workers themselves. For instance, a differently run project in Hồ Chí Minh City, known as ‘Legal assistance to migrant employees in Vietnam,’ is a partnership between different non-governmental organisations, social institutes, universities and the local Youth Union organisations (Conference on sharing and developing models of support for migrant employees, 17/12/2015). There are also similar legal sessions organised periodically at the residential areas of migrant factory workers, covering not only labour laws but also migration law, family law and civil law. However, the legal sessions and other social support activities are run by the aforementioned organisations and law students. As the LAC lawyer proclaimed in a conference, ‘only workers can help and understand workers’ (17/12/2015). As both core workers and beneficiaries of the project are workers, there is the assumption that they will share the same identity, interests and values and thereby can easily interact with each other. The aim of the core workers project, and other similar projects, is not only to enhance workers’ legal knowledge, but also to establish networks of social and legal support among workers. Furthermore, in drawing attention to migrant workers’ difficult lives as the project’s background and justification, the project hinted at the indirect support of legal aid to improving workers’ lives. All of these objectives, according to the LAC, are best accomplished by the workers themselves.

The next section draws on my interviews and conversations with the LAC lawyer and 14 core workers, five females and nine males, who have been involved in the Đồng Nai core workers program for at least four years. These interviewed core workers are all migrants, mostly from the northern and central provinces of Vietnam, who have lived in Đồng Nai from five to 15 years. All but one currently reside in Đồng Nai. The exception, a male core
worker, is now living and working in Hồ Chí Minh City, but still maintains connections with the LAC and core worker group. Two female workers are in their 20s and one of the men is in his 50s. The others are all in their 30s or 40s. I did not want to intrude into my respondents’ personal affairs and so did not ask them directly about their educational qualifications. However, sometimes core workers mentioned these details voluntarily in our interviews or conversations, and in one case, through an article in Đồng Nai Labour News. Consequently, I know that three of them had some training in vocational schools or colleges, three had university degrees, and one had finished junior high school (grade 9). Regarding family status, six were married with children, one was expecting her first child, two were married but without children, two were single parents, and three were unmarried.

My first fieldwork, from December 2014 to April 2015, took place at a time when the major funding for this program had ceased. I managed to contact and interview these workers thanks to their ongoing commitment to legal aid activities. I contacted three key core workers through the introduction of the LAC lawyer, and they introduced me to the others. All core workers were more open and enthusiastic about sharing their experiences than those workers who had no legal training. All interviews and conversations took place at core workers’ units or in a coffee shop. I also include in the analysis core workers’ complaint letters, materials obtained from the LAC and the local labour newspaper, and observations of a legal session.

I often started my interviews with general questions about core workers’ workplace experiences and their legal aid involvement. I believe that these experiences are crucial to shaping the way they perceive and make sense of the law. I generally framed my questions in broad terms, such as ‘what is good about the core workers project?’, ‘how do you feel about your work?’, ‘what do you think is workers’ most common grievance?’, ‘what do you think about labour law, the state and unions?’. Issues about law, justice and moral norms often came up in their responses to my broad questions. To six of them who were not, or no longer doing factory jobs, the interviews and further conversations were more about their legal aid involvement. Those six workers seemed more interested in talking about legal aid, their general opinions and observations in relation to the law and labour relations, rather than their own past workplace experiences.

Most core workers recalled their experiences starting in the project with joy. Back then, they had joined a mobile legal session run by LAC lawyers in their rental areas. The session
included a short lesson about a section of the Labour Code, and question and answer time. In the question and answer time, the lawyers raised questions about legal knowledge and received questions from them regarding their problems or queries about the law. Participants who responded correctly to the speakers’ questions were rewarded with small gifts. Core workers delightedly recalled their active participation and the good number of gifts they received. Active participants, including those who raised many questions or good questions to the speaker, were considered potential trainees for the legal aid project. The lawyers then asked for their contact numbers, before inviting them to join free training classes about labour laws and later the Oxfam project.

During the Oxfam-funded period, from 2009 to 2013, the number of core workers grew to 617. They worked across four of the most populated industrial regions in the province, where labour disputes are also high: Biên Hòa, Trảng Bom, Nhơn Trạch and Long Thành. Normally, three to four workers took charge of organising each mobile legal session. Once having selected a particular rental area of migrant workers, these core workers then contacted the landlords/landladies, as well as the grassroots administrative authority, for their permission and assistance to organise the sessions. Usually the landlords or the grassroots authority helped send a notice around the areas several days in advance. The sessions often took place on Saturday or Sunday evening after 7pm, as this is a convenient time for most workers, and organisers could expect good attendance. There were often four evening sessions running concurrently at four different consultation spots (điểm tư vấn), covering one to a few topics in the Labour Code or Law on Social Insurance. Some examples of the topics are: labour contracts, wages, working hours, unemployment benefits, and social insurance. The organisers would return after a week or so to cover other topics. During the peak period of 2011 and 2012, Oxfam organised up to 15 legal sessions each month. According to the LAC report, there were 510 sessions from 2009 to 2013 with the participation of more than 24,600 employees.

Before the sessions, all core worker organisers gathered at a nearby location after having parked their own motorbikes. They all got into a small van supplied by Oxfam, which carried separate boxes containing the public address systems, leaflets and gifts for participants. The organisers were dropped off at their exact spots with the boxes and were driven back to their previous gathering location after the sessions finished.
Each session lasted from one to 1.5 hours, or even longer, and had the same format as previous sessions run by the lawyers. Each consisted of a short legal lesson of 15 to 20 minutes, followed by question and answer time. The lessons were more or less interactive depending on the speakers’ speaking skills. The speakers were also willing to respond to questions that were on different topics from that being covered. The organisers then handed out leaflets related to the presented topics to participants at the end of the sessions.

The following is an example of the question and answer time, which I observed in March 2015.32 A part of the session was about employees’ unemployment benefits. Before raising the question, the speaker gave some brief information:

If we33 have contributed to the unemployment insurance for 12 to 36 months, we are entitled to unemployment allowance for a period of 3 months. On top of that, if we have contributed to the insurance for an extra year, we are entitled to an extra month of allowance, and so on. In short, another year, another month.

He then raised a question:

Friends, do you know how much we are supposed to contribute and how much we claim? I repeat: What percentage of our wage do we contribute and claim? Whoever has a correct answer will receive a gift.

A female participant had a correct answer: an employee contributes one percent of the monthly wage and can claim 60 percent of his/her average wage in the six months prior to becoming unemployed. The speaker then raised another question: ‘When claiming the unemployment allowance, which documents are we required to bring?’ Another female participant gave a near-complete answer. The speaker corrected her, saying that required documents include the employee’s national identity card, a copy of the labour contract, the letter of dismissal decision or contract termination, and social insurance booklet. Both of these participants received a gift each.

There were variations in the attendance of workers in these legal sessions. From core workers’ anecdotes, the numbers of participants for each session ranged from eight up to more than 30, though the organisers often aimed for 20 to 30. One group leader told me: ‘The participation rate is not a big deal. We would still run the session even if only a few people

32 This session was organised after Oxfam ended its funding to the project. However, the format and content of the legal sessions remained the same.
33 The Vietnamese pronoun is chúng ta. I will discuss this semantic use later in the chapter.
showed up’ (7/5/2015). At times the number of participants went beyond expectation, while at other times, the organisers had to knock at workers’ doors and encourage them to attend. Another core worker described a crowded session:

> While we organisers often take turns to speak, normally there is only one speaker at a time. But a few sessions I organised attracted so many people that three of us had to speak at the same time, each ‘taking care of’ one group of people. I feel like those participant workers were hungry for knowledge (Biên Hòa 30/1/2015).

Legal sessions often took place outdoors and therefore were also subject to weather conditions. Some core workers were willing to share their phone numbers to participants in case they needed any support regarding queries about the labour law or workplace grievances.

Each core worker was paid 200,000 dong for organising each legal session, and 50,000 dong for participating in the monthly meetings with the LAC and Oxfam staff. The meetings allowed core workers to get updates about labour laws and policies, share experiences among themselves, and raise any problems or difficulties in their activities to the staff. The financial assistance, or lack thereof, is a factor that explains core workers’ levels of commitment, which became evident after Oxfam withdrew its funding in 2013.

Meanwhile, three so-called worker-supporting spots (điểm hỗ trợ công nhân) were also set up in a convenient location close to workers’ residential areas in three of the four municipal regions mentioned above. The spots provided social spaces for all workers, who could visit to socialise with each other, read books, and enquire about legal issues. They were often renovated from, or attached to, a ward-level community house, equipped with one or two desktops, and filled with books related to law and of general interest. They were open every week night and for a few daytime hours during weekends. Core workers who lived nearby took turns in manning the spot and received a small allowance for their time.

The Oxfam funding ceased at the end of 2013, when the responsibility to oversee core worker groups was also assigned from the LAC to upper-level unions where these core workers were based. Since then, only two groups in Trảng Bom and Biên Hòa have remained active, though with dwindling vigour and a serious decline in the number of core workers. Besides the funding problem, work and family commitments also constrain core workers from participating in the program. As of early 2015, the number of core workers had shrunk significantly to fewer than 40. However, for the past two years, according to the LAC lawyer,
the centre has still managed to coordinate dedicated core workers to organise 15 mobile legal sessions a year across the province, which are funded by the People’s Committee. Remaining core workers also participate in social events organised by the provincial Labour Federation and legal consultation events by the national labour newspaper, *Labour*.

**Core workers’ interaction with other workers**

The main factor that allows for greater interaction between core workers and other workers and in turn contributes to the benefits of legal aid activities is the location where mobile legal sessions take place and where legal advice is given. Organising legal sessions within workers’ residential areas allows core workers to openly address participants’ grievances, alert them to legal violations, and share tactics to shield workers’ rights and interests against potential managerial abuses. Outside legal sessions, core workers also offer legal advice in person (when workers in the same neighbourhood approach them at their rental units), by phone, or at worker-supporting spots. The creation of these spaces outside the company compounds, where core workers and workers in need can openly converse without any pressure or monitoring from the management, is integral to workers’ awareness of their legal rights which can potentially enable further action against injustice.

The situation was different when the legal sessions were held under the company’s oversight. According to two core workers, during the height of the project, they used to be invited to organise legal sessions in the factory compounds and company-provided dormitories, thanks to some coordination between the official unions and the company management. It is unclear why these companies were interested in educating workers about labour laws. What is clear is that there was some constraint on the content of the sessions imposed by the hosting businesses. One worker recalled:

> Before our sessions at the dormitories, the company people asked core workers to speak exclusively about what is written in the law. That means we were not able to give examples about legal violations, advise workers of how to deal with such situations, or show them some tricks to protect themselves, which we can do in our mobile sessions at workers’ residences. And you know, during the question and answer times, participants kept silent and raised no questions or queries, as they were wary of the companies’ surveillance. This is in contrast to the fact that we always receive questions and complaints, if not too many, when having our sessions at workers’ residences (Trang Bom 18/3/2015).
As all core workers assume that most companies violate and evade labour law, they interpreted the ‘silence’ as workers’ wariness rather than the companies’ legal compliance. Another core worker went further in asserting to me that ‘the true and actual aim of running legal aid sessions is for us [core workers and other participants] to identify signs of businesses’ legal violation and help each other find a way to deal with them, or bring the issue forward to the union’ (Trảng Bom 27/12/2015)

For example, a legal session at a workers’ residence that I observed in March 2015 includes content that concerns the actual practices of labour law. The session covered labour contracts and unemployment benefits. After a brief overview of different contracts and their conditions, the speaker moved on to talk briefly about wage rises. This issue was not part of the planned topics, but I understood from him that it was an important concern of most workers and was worth mentioning.

A company is supposed to raise wages for workers according to the government’s minimum wage and its own wage table. This means that the longer one works, the higher one’s wage is, in relative terms. Let’s take the example that the government raises minimum wage by 400,000 dong. If the company applies that amount to the new wage of all workers across the company, that is wrong. Instead, senior workers deserve a higher wage rise. The rates of wage rise should take in longer years of employment.

Instead of explaining to participants about the wage table, the speaker sent a simple message that senior workers legally deserve a higher rate of wage rise than newcomers. I was a bit surprised at the participants’ silence after his explanation. As wages are a common source of grievance and are important to workers’ livelihoods, I expected participants to raise some follow-up questions about their own company cases. The silence would normally imply that they either understood the lawful measure of wage rise, or that all the company managements are compliant. However, from my conversations with ordinary respondent workers and from the core workers’ accounts, the wage table is unknown to ordinary factory workers. I also doubt that companies are compliant, given the issue of wage differentials being a common reason for strikes and disputes. Following the participants’ passive reaction, the speaker, without hesitation, continued with his prompt: ‘You can now judge if your company issues the right amount of wage rise for you. Please feel free to see us if you encounter any problem.’
Later on, he went back to the topic of labour contracts. He gave examples about the company’s illegal termination of contracts and advised, if not encouraged, participants to sue the management when faced with such situations. He also told them ‘not to be afraid of doing so’ and specified the compensation money that litigants can claim. His bold statement not only reminded workers of the law as a potential tool to act against injustice, but also made them feel confident about their action.

Also in that same session, the speaker reminded participants about the legal regulations regarding employees’ behaviour at work. As he specified: ‘The Labour Code ensures not only our rights and interests but also those of the company.’

When we violate any rules, the company can sack us. For instance, if we have five days off without permission in a month, or 20 days a year, the company can sack us. Do any of you remember that provision?

One participant then asked: ‘How about annual leave?’

The speaker responded: ‘Of course you can take your annual leave. What I mentioned was leave without permission.’ He then continued: ‘Let’s assume that we have had 19 days or 19 and a half day off so far in a year. If the company sacks us, it is wrong. Then we can sue the company. If we sue, we are sure to win.’

The speaker frequently used the pronoun ‘chúng ta’ throughout the session. While Vietnamese pronouns ‘chúng ta’ and ‘chúng tôi’ refer to plural first persons and have the same English translation, their uses are slightly different. So far in this thesis, and except for this context, the pronoun ‘we’ is the translation of ‘chúng tôi,’ or similar terms such as all of us, some of us. While ‘chúng tôi’ refers to me and them, not you, ‘chúng ta’ refers to me and you; in other words, the former is exclusive and the latter is inclusive ‘we’. This use of an inclusive pronoun illustrates a sense of shared identity between the speaker and the audience, an identity as workers together. He spoke of the potential problems and the actions of the audience as collective ones, something that he also shared and engaged with albeit only in spirit. The connection that the core worker-speaker tried to establish with the worker-audience indicates a sense of collectivity, which emerged out of the former’s empathy and shared interests with the latter even though they were now in differing circumstances and production networks.
Besides the legal sessions, core workers also offer legal advice to disadvantaged workers at the worker-supporting spots, over the phone, or in person. This is possible as core workers are willing to share their contacts, alongside the LAC contact, to participants at the legal sessions. Conversations about labour laws and policies also take place around core workers’ rental units. As of 2015, two of the interviewed core workers have recently moved out to their new houses, but they still pay visits to migrant workers’ rental areas when convenient on the weekend. One of them said that he and his family had ‘emotional ties’ to the old place, where his relatives and friends are still living and where migrant workers are still in need of legal assistance.

Core workers also offer legal advice to fellow workers in the same company, which often happens during the break, lunch time, or after work. While most of them talked at ease about their knowledge sharing, two of the core workers told me that they have to walk a fine line to make sure that they would not be watched over by their bosses. In particular, they specified to me that they did not reveal to their co-workers that they are ‘core workers,’ or belong to the LAC program. One of them, Mr. Hái, also tries to keep this fact hidden from the company union and management, and even went further in lying to a manager when asked how he is so knowledgeable about the law. Another core worker, Mr. Lê, is willing to share general legal issues with his fellow workers during the work breaks, but prefers to talk through the case with a disadvantaged co-worker after work and outside the factory. Both these core workers think that concealing their role allows them to continue to maintain close and good relationships with their fellow workers and keep themselves safe from the management’s surveillance.

The analysis thus far of the interactions between core workers and ordinary workers suggests that law does not stall the development of class consciousness, as Chan and Siu (2012) have argued. As mentioned in the Introduction, Chan and Siu (2012) suggest that workers’ pursuit of individual rights, an indication of legal awareness, deters them from taking actions that benefit workers as a collective. Such an argument is premised solely on the observation of workers’ actions through judicial channels, and does not factor in the social spaces that allow workers to raise consciousness, among each other, of their individual and collective rights. Social spaces outside the purview and surveillance of management are the breeding grounds for core workers to help their fellow workers make sense of injustice and when possible, take measures to improve their working conditions. Core workers’ class consciousness – the way
in which they identify with other workers as a collective with shared interests – is nurtured through their involvement in legal aid activities. While the core and ordinary workers in the province may not (yet) have become a ‘class-for-itself’ in Marxist terms, there is no evidence to suggest that their awareness of law is a factor that constrains their class consciousness.

In the next section I will move on to discuss core workers’ views about legal aid, law and workers’ resistance to find out whether and how their access to law makes them different from ordinary workers.

**Core workers’ views of labour law and workers’ resistance**

The core workers I spoke with shared common views about the role of legal aid in promoting workers’ interests and almost all of them agreed on what constitutes rightful resistance. They regarded the Oxfam project as useful and effective in bringing the law closer to workers in the province, and wished for the continuation of the project. One core worker remarked: ‘The LAC and the legal aid program have helped bring some improvements to workers’ plight in general; without them, many of our fellow workers would continue to be exploited and mistreated’ (28/2/2015). The core workers also felt positive about their own role and the legal knowledge they have obtained. Some said they are ‘responsible’ for helping disadvantaged workers, while others saw themselves as contributing small good deeds to society. Their other commendations of the project’s positive impacts included that it raises workers’ ‘understanding’ (hiểu biết) of their rights and interests, helps workers ‘face less coercion’ (đố bị chèn ép) and makes their lives ‘less miserable’ (đớ khó hơn) (30/1/2015, 5/2/2015, 7/5/2015, 27/12/2015).

In short, core workers saw the law as a potential ‘weapon of the weak’ (Scott 1985) that puts workers in a good bargaining position vis-à-vis their supervisors and managers. A male worker proudly said: ‘The company management in general should be wary because workers now know more about the law’ (28/2/2015). Core workers especially emphasised that legal knowledge allows workers to ‘protect themselves,’ or ‘protect their rights and interests themselves,’ a type of language that echoes the VGCL’s legal aid objective. Their thinking was different from the ordinary workers I spoke with, who had little or no interest in employing legal knowledge to contest management’s behaviour. Though both core workers and ordinary workers had experienced injustice through the practice of the law at their
workplaces, the former group saw the necessity of legal knowledge as a buffer against management abuse, while the latter felt hopeless and disillusioned about raising their voices. Core workers’ beliefs in the law were also influenced by their interactions with LAC staff and their observations of the staff’s commitment. They did not see the LAC as a part of the state or as holding corporatist interests. Core workers regarded the Centre as genuinely attending to workers’ interests, evidenced through their approachable manner, (free) generous support, and especially the high success rate of labour litigation. When encountering tricky issues and queries from fellow workers, core workers always, and only, refer them to the LAC and not the official unions. In observing and experiencing the dedication of LAC staff, core workers placed their trust in the LAC without regard to the practical limitations that it might face in holding state authorities accountable for law enforcement. Among all interviewed core workers, Mr. Hải was perhaps the most positive about the LAC. He talked of an LAC legal counsellor, who trained him from the early days of the project, as a source of inspiration for her outstanding dedication towards the workers’ plight. He said that, similar to the lawyer, the counsellor has always ‘tried to demand something beneficial for the workers,’ (30/1/2015) even though an informed outsider might judge that those workers were not in the right.

Core workers’ attachment to the law has led them to have a critical view of strikes, and especially spontaneous strike actions, since they contravene legal procedures. This does not mean that they were against workers’ collective actions, but they supported actions with a proper procedure informed by labour law. For instance, one of them specified:

> In some circumstances, some workers get so hot-tempered that they instigated strikes without [going through] any procedures. They called upon workers to go on strike but *did not really speak up on workers’ behalf*. Instead, if someone wants to mobilise their fellow workers, they should *stand up, state their aim of representing workers, and take the initiative to collect workers’ demands*. They can seek help from the LAC to write a complaint letter and send their complaints forward (Trạng Bom 18/3/2015).

This extract gives a vivid depiction of a workers’ representative, who acts in an overt rather than underground manner, and whose course of action is based on collective interests rather than individuals’ immediate needs. This depiction demonstrates core workers’ awareness of

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34 The people referred to here are different from informal strike leaders who mobilise workers around certain complaints and sometimes may be asked to get involved in the process of strike resolution (Pringle and Clarke 2011).
the law and the reality of the under-representation of workers’ interests. With little faith in the current union system, they see the potential for workers’ resistance to take root in an awareness of collective interests and capacity for collective voice, and to be enabled by an institution that they trust.

However, as discussed in Chapter 3, aggrieved workers often refrain from speaking up against management for fear of losing their jobs, or choose not to disclose their names when writing complaint letters. In the broader context of strikes, a worker whom the manager considers a strike instigator or finds to be vocal during a strike can easily face retaliation. That worker can either be dismissed, or transferred to a different work position in the company until he/she is bored and voluntarily quits the job.

I followed up with the previous depiction of workers’ representatives by raising the issue of retaliation with three core workers: ‘I think that if workers expose themselves or go through the complaint process, they can be easily identified by the boss and face some punishment. So workers prefer not to stand up and act in that overt manner’.

Two thought that retaliation would beget further resistance. For instance, one said:

Workers who stand up and act against management should not be afraid. If they are sacked, they can sue the employer for the illegal unilateral termination of contract. If they are transferred to a different position in the company, this process must follow what is stipulated in the Labour Code. Briefly, the transfer must result from a negotiation between the employer and employee, and the employee must be notified within three days before the actual transferral. Also, the total duration of transfer must not exceed 60 days. So if any of those conditions is violated, a worker can also sue (Biên Hòa 30/1/2015).

Rather than directly addressing my concern, another core worker raised a complaint related to his previous unsuccessful attempt to mobilise his fellow workers against their company’s failure to raise wages:

I told my fellow workers about the company’s failure to raise wages but they continued to keep their silence because they did not want to risk their jobs. Their thinking is not right. How can they lose their jobs when they are in a labour contract, a labour relationship with the employer, and their rights and interests still apply? (Nhơn Trạch 11/4/2015)
In short, these core workers believed that resisting workers would be able to mobilise their fellows against the company’s legal violation and protect themselves against illegal acts of retaliation by the management if they knew the law. They did not use the exact word ‘strike leader’ or ‘strike organiser’ (người lãnh đạo / tổ chức đình công), the type of language used by union and labour officials, but ‘the one who stands up/rises up’ (người đứng lên) to indicate the ideal person capable of contesting management abuses. They believed that the law will do justice to law-abiding acts and is the only right way to seek justice.

Core workers’ role in resistance

My next analysis, based on four case studies, aims to investigate further, first, whether and how core workers contribute to collective action, and second, their perceptions of workplace relations and (in)justices seen through the lens of labour law. Depending on their own workplace experiences, different core workers may have different attitudes and roles in relation to workers’ actions against managerial conduct.

Sympathising with strike actions

Mrs. Hà has been a production manager for four years in a wood manufacturing company. As migrants from a northern province moving to work in Đồng Nai, Hà and her husband have lived in workers’ rental units and for that reason, she had a chance to join a mobile legal aid session and later the core workers project. Her position as someone who stands in between workers on the shop floor and the company management makes her a distinctive figure among core workers. The Taiwanese wood company where she works has been affected by wage-related strikes almost every year from 2010 to 2014. In the most recent strike, in 2014, workers were dissatisfied that the company’s wage rise was being applied only to workers who had been employed for less than five years, with longer-term people receiving no increase (Report on strikes and collective labour disputes, Đồng Nai Labour Federation, 2014).

Hà’s initial explanation to me regarding the wage rise issue was similar to that of other interviewed workers in Chapter 2: she referred generally to the state’s ‘wage rise’ at the start of the year when workers were kept waiting for the company’s decision. The lack of a two-way dialogue between management and workers has either led to workers’ dissatisfaction after a wage rise decision was issued, or the management’s deliberate delay to announce its decision which eventually exhausted workers’ patience. Later on she explained that the
underlying problem with ongoing labour disputes lies in the company’s failure to establish a wage table, an issue that she herself has posed to the company union’s chairman:

I have asked the union chairman why the company does not have the wage table which includes the percentage of wage rise. He told me that he had collected workers’ opinions and demand for the wage table for several years. However the company has not addressed this. In a strike last year, workers demanded for a wage table but it still was not addressed (22/1/2015).

While ordinary respondent workers justify their demands for a higher wage rise based on their sense of fairness and equality, Hà clearly identified such demands as rooted in the company’s failure to adhere to the Labour Code. Without explicitly saying that the company’s conduct is illegal, Hà has effectively justified workers’ demands throughout their strike actions by repeating management’s refusal to see to workers’ problems.

Hà then followed up with the union’s failure to satisfy workers’ demands: ‘The union chairman is sandwiched between two sides. He can only find some way to negotiate [workers’ concerns] with the boss. If the boss had a good heart, he would be listening’35 (22/1/2015). Her last sentence interestingly suggests that the management’s moral commitments are a key to the actual realisation of workers’ lawful demands. It was at this point that Hà started to move freely between legal and moral reasoning to defend workers’ actions.

Her sympathy with the workers on the shop floor became evident when she told me about workers’ frustration with the meal quality and unreasonable discipline in her company. In addition to the wage issue, she opined that the other problems further fuel workers’ grievances amidst the management’s continuing refusal to address them. Though she initially showed some ambivalence in her judgement of workers’ strikes, she seemed to be supportive of their demands and actions. The following transcript details her reactions and attitudes when strikes broke out in the past few years:

In my situation it is not a matter of participating or not participating in strikes. I am situated between workers and the management. When strikes happen, I can’t continue to work, but I also can’t stand outside the company gate. I therefore choose to go home. In general I know that workers’ going on strike is wrong, but I understand that

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35 The Vietnamese word is nghe, which means listening or hearing, and in some context also means following someone’s words or advice.
they were so angry. I can’t do anything about their action. Nor can I talk in favour of the company (22/1/2015).

Her account demonstrates an awareness of the legal procedures for strikes, which workers have contravened by taking actions spontaneously without going through a complaint process. Her inaction when strikes take place indicates the quandary of standing by workers’ action, officially deemed to go against labour law, when the company management is not in the right. When I later followed up by asking about the company’s treatment of workers after a ‘successful’ strike, Hà changed her stance and defended their actions:

After a strike for which the management had to raise wages and workers were successful in getting their demands, the management in turn put pressure on the workers, they pushed workers a lot. They supervised and checked workers more closely. […] However, workers had gone on strike to demand their rights and interests. In general they hadn’t done anything wrong, and they don’t need to be afraid of their action. As far as I know, workers asked the Department of Labour or the LAC about their demands before and during strikes (22/1/2015).

Hà’s narratives, like those of other core workers, represent a tension between a legal and moral evaluation of strikes. She considered workers’ actions to be unlawful but later suggested that their demands are ‘legitimate,’ as ‘workers only demand the minimum level of wage according to law, no more than that.’ As can be drawn from her account, in stipulating certain rights and interests that lay the grounds for workers’ demands, the Labour Code contributes to shaping rather than constraining labour resistance. Such contribution, as she made clear in the above transcript, is possible through the legal consultation offered by the Department of Labour and the LAC. By throwing her support behind workers’ demands, Hà has come to treat their experiences as shared injustices and condoned what she initially saw as legally wrongful actions.

Hà spoke positively of her connections with workers on the shop floor, mentioning that many of them approached her about legal issues after learning of her engagement in the core workers project. She is also positive about workers’ improved knowledge of labour law over time, which allows them to judge the management’s conduct and take necessary action. Her narratives overall reveal that the lack of legal implementation, workers’ understanding of law, and legal consultation all contribute to workers’ resistance at her company. She also hints at management’s ethical role as a key to ensuring workers’ interests.
Mr. Lê has worked for 9 years in the storage section of a food processing company. He and his wife, who works in the same company, have two small sons. This company, discussed in Chapter 2, was fraught with strikes and work stoppages from 2010 to 2014. Workers’ grievances were mainly about the unclear piece rate payment and the company’s failure to pay the premium overtime rates.

As mentioned before, despite perpetual exploitation, many workers on the production line have given up their lunch break to produce as many pieces as possible and did not complain about excessive overtime hours and weekend work in their interviews with me. Lê nevertheless raised his concern about the excessive working hours that he and his fellow workers are enduring. In his conversation with me, he also raised the issue that the company’s overtime hours go beyond the legal limit of 30 hours per month. Besides complaining about the lack of premium rates for Sunday work, Lê also pointed out that the premium rate for night shifts has not been properly calculated or shown up in workers’ payslips, something that other respondent workers did not raise. The following transcript is an example of his detailed explanation about the company’s problems with reference to legal terms:

Besides the piece rate problem, the working hours per month, including overtime, often exceed the maximum legal limit of 300 hours. I can show you the attendance records of my group; it’s common that many of us work more than 300 hours a month. No premium overtime rates are applied for night shifts and Sunday work, which are 30 percent and 200 percent, respectively (5/2/2015).

Despite his thorough legal knowledge, Mr. Lê has not mobilised his fellow workers nor stood up as a workers’ representative during the strikes. He lives in a workers’ rental unit close to his many fellow workers, who, like him, are migrants to Đồng Nai province. His legal knowledge and living arrangements provide a fertile ground for him to become a strike organiser or leader, similar to those featured in Trần’s stories of labour protests (2013). Yet he has not followed such a path as his concern for job security keeps him from speaking out on behalf of workers’ collective interests. Lê has learnt that he might lose his job if he were to take any overt action against the company management. This happened to a young male worker in 2014, who had worked there for one year before he engaged in a confrontational action against the management. In the strike in 2014, he raised a banner with workers’ demands at the company’s gate and blocked the manager’s car to put pressure on him to meet
his demands. Though Lê and other respondents did not personally know him, they knew about his job loss shortly afterwards.

Lê therefore chose to contribute to workers’ resistance in a covert rather than explicit manner, by throwing his support behind complaint writing. He helped some of his fellow workers write a collective letter to the management before the strike in 2014. He gave advice about the written language and some relevant legal terms to others, who took the initiative to write the letter and collect other workers’ signatures. Lê no longer retained the letter but clearly remembered its five demands: (1) transparent calculation of the piece rates; (2) payment of the premium rate for Sunday work; (3) a year-end bonus; (4) an increase in meal portions; and (5) a transport allowance. Even though Lê earlier complained to me about the excessive overtime hours, this issue was not raised in the complaint letter. The reason is that a reduction in overtime work would result in a reduction in workers’ monthly income and consequently affect their livelihoods. The absence of this issue concerning overtime in the letter demonstrates the tension between legal understanding and actual demands that are more closely linked to workers’ everyday subsistence. According to Lê, after the letter was sent to the labour inspectorate at the Department of Labour, some resolution meeting happened at the company office, which he did not attend, but which saw no change to the company’s policies. Soon after that, the workers who wrote the letter quit their jobs.

In short, Lê’s legal knowledge leads him to understand the legal problems behind workers’ exploitative situation and the management’s failure to pay workers the correct income according to law. His legal consciousness has not substantially changed his workplace experiences or led to concrete actions against injustice. Concerned about managerial retaliation, Lê has preferred to assist his fellow workers with individual issues rather than raise collective awareness about legal violations. His indirect role in complaint writing with regard to collective issues can be seen as the only pragmatic way for him to raise workers’ grievances in accordance with legal procedures without risking loss of his job.

**Writing complaints**

**Case 1: a sole complainant**

Mrs. Nguyên is also supportive of complaint writing, but, unlike Lê, she is overt in her role and initiates complaint letters. Nguyên has worked for six years in a branch of a joint stock garment company in Đồng Nai, which employs 700 workers. She is a single mother of a
school-age daughter. As she told me, the company where she works has not been affected by factory strikes but is fraught with legal violations. Before taking the initiative to speak up on behalf of her fellow workers, Nguyễn herself was involved in an individual dispute with company management which saw her turning to semi-official channels to solve her problem.

Her individual dispute started in 2011 when she claimed that she was transferred from the storage section to a sewing position against her wishes. This happened after she participated in a training program coordinated by her employer and a skill training college. After failing to have the manager reassign her to the storage section, she was then transferred to a quality control position for which she received a lower wage. Nguyễn decided to lodge a complaint letter to the upper-level union office. Subsequently, the company management’s mistreatment of Mrs. Nguyễn was briefly reported in the local labour newspaper, in which her name was abbreviated and the company’s name was not revealed. After the publication of the news, a resolution meeting took place between the upper-level union officials, herself and her employer. However, the outcome was not in her favour. Then, while remaining in the job, she was subject to numerous arbitrary decisions and disciplinary actions from the managers.

Nguyễn did not make it explicit to me whether the unfavourable outcome of her individual dispute pushed her to take further and bolder action against the company’s conduct. However, it is clear that she then stopped pursuing her own case and started a new petition in relation to complaints and grievances of a collective nature. In 2014, with assistance and consultation with the LAC lawyer, she decided to lodge a complaint letter on behalf of her fellow workers against the management’s conduct. The letter she showed me was directed to the leaders of different state agencies in the province – the People’s Council, the People’s Committee, the National Assembly’s representatives, and the People’s Mobilisation Committee, as well as the local news channel. She previously sent a copy to the labour inspectorate of the Department of Labour, but due to their unresponsiveness, decided to forward the problem to other state agencies.

Mrs. Nguyễn started the letter with her name, phone number, and postal address. She then referred to the employment positions and workplace behaviours of her and her fellows. The

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36 Nguyễn did not proactively approach the journalist but was introduced to him when he planned to report on workers’ mistreatment cases.
collective nature of her complaints is mixed with her own individual action and self-ascription, evidenced through an interchangeable use of the pronouns ‘I’ and ‘we’ throughout the letter. For instance, the letter starts with:

Now I am writing this letter to urgently request the authority to consider and solve our problems. We have worked at sewing plant 3 of company X for many years. During this time I have always tried to complete the assigned tasks and have never violated any company regulations.

Nguyễn then provided more details about employees’ working situation and the company’s profits and business awards:

Due to the enormous pressure of completing the quota and ensuring products’ quality, we employees always have to brace ourselves for the tasks. Thanks to our contribution, the company has achieved such things as: accomplishing the planned targets every year, having its market further expanded, and exporting more products. In particular, the company is annually acknowledged as the leading company of the province and receives all sorts of commendations and rewards. Furthermore, the company is also granted the title ‘Labour hero in the reform era.’ How can the company achieve all these titles? It is thanks to employees’ contributions and labour. Yet the company has coerced and exploited us employees.

Here Nguyễn demonstrates her grasp of the reality of production: the company meets its deadlines and expands its profits at the cost of workers’ labour and exploitation. She is acute in pointing out the irony involved in giving the title of ‘labour hero’ to a company that does not even meet its legal responsibilities to its employees. Furthermore, the extract also suggests that there should be some reciprocal exchange in the labour-management relationship: if the workers meet management’s demands despite their excessive nature, then management should be grateful for their service. The company’s coercive and exploitative practices in the face of labour loyalty are seen as indications of the company management’s ingratitude to the workers, who deserve good treatment and recognition for their hard work.

She then accuses the company management of problematic wage policies, unclear bonuses and lack of insurance payment. She explicitly refers to legal regulations in her allegations,

37 The criteria for this title are outlined in the Prime Minister’s decision 38/1999/QD-TTg, and include a business’ contribution to the local, sectoral and national economic development; technological development and innovation; human resource and capital development; conformity with the Party agenda and state legislation; and property protection.
and gives evidence and reasons to demonstrate her arguments. As evidenced in the following example:

As far as I know, the common minimum wage of 1,150,000 dong only applies to state employees and officers. Private enterprises must apply the regional minimum wage of 2,700,000 dong according to the legal regulations. However, I don’t know why my company has kept calculating our wages based on the common minimum wage to pay employees. When we asked the management and [company] union about this issue, they responded that the state agency allowed them to do so. I asked, which agency and who allowed the company to do so, and they kept silent. Who and which agency dared to allow the company to act *against the law*? [italics added]

The extract illustrates workplace problems similar to those discussed in Chapter 3 with regard to workers’ income and the lack of responsiveness by the company management towards workers’ queries. Yet the writing manner in this case is clear-cut and confrontational, with the writer judging management conduct in terms of its illegality. I shall further note that the continual shifting between ‘I’ and ‘we’ in the previous extract highlights Nguyên’s individual defiance in the face of a shared problem. She has managed to prove that her voice matters: the management’s silence in response to her query can be understood as a compromise in a context that would otherwise see a reverse effect upon ordinary workers.

The last rhetorical question interestingly demonstrates how the writer perceives and situates law within workers’ relationship with the state and management. While Nguyên freely cited relevant legal provisions in the preceding sentences, she later seems to view law as a supreme authority that shall circumscribe the power of the state and management. As law has been daringly evaded and manipulated on the shop floor, Nguyên wants to assert to the perpetrators and their accomplices that they have committed outrageous acts against the law’s authority. Her reference to the state agency when talking with the management and union not only evokes the state’s responsibility of law monitoring but also calls on the state to honour the letter of the law. Her rhetorical question therefore is an outright challenge to the state and management for their complicity. The question also indicates a strong sense of injustice derived directly from workers’ legal understandings and practices of labour law that is not observed in other letters analysed in the preceding chapter.

The letter moves on with further details:
According to the legal regulations, the company has to raise wages for employees every year. We have worked here for many years but our wage has been raised only once from 1.67 to 2.01 [the wage level]. This will affect employees’ rights and interests when we retire. We raised our question but the company said that, if we wanted to have a wage rise, we had to take a skill examination, to show that we can make a certain quantity of clothes in a certain time. As we are doing jobs like quality control, housekeeping, etc. [i.e. non-productive areas], how can we make the products? Such conduct is against the law, as the company evades its responsibility to employees. [italics added]

The accusation here was raised on behalf of all employees but seemed to centre specifically on those employed in non-production sections where Nguyên was assigned. Several issues can be drawn from this short extract. First, the writer refers to law to highlight the illegality of the company conduct, including its failure to raise wages and the excuse for its decision. This use of law is different from that of the letter writers analysed in Chapter 3, when law is mentioned to support moral claims of unfairness. Second, the reference to ‘rights and interests’ in this context constitutes both legal and moral claims. Legally, the pensions that workers receive each month will be calculated based on their basic wage at the time of their employment, and therefore, a low basic wage would later allow for little retirement benefit. Yet it also implicates a moral obligation of employers, derived from the legal commitment above, in ensuring employees’ welfare and livelihoods. The way Nguyên frames her argument demonstrates an awareness not just of workers’ legal benefits, which have been infringed upon by the management, but also of the ethical consequences borne by the workers in the long term. Furthermore, her allegation of employers’ legal violation does not only entail their failure to raise wages but also stretches to their verbal responses to workers’ enquiries.

The letter moves on with further legal reasoning, and alerts the state authorities to the company’s deliberate cover-up of its illegal conduct:

According to the labour law, employees who work overtime shall be paid a rate of 150%, 200% or 300% for weekdays, weekend, and public holidays, respectively. We are paid by piece rate, and these should be calculated based on the premium rates mentioned above. However, the company only pays us the normal rates.

According to the regulations, overtime work shall be done on a voluntary basis. However, in practice, the company forced employees to sign a paper and compelled them to work overtime.
In addition, every time an examination team came to the company, the company forced employees not to reveal that our overtime hours exceed the limit as the law allowed. In order to ‘cope’ with the state, the company forced employees to sign their cards off at the end of the normal working time, then go back to work.

Here Nguyên accuses the company of not just illegal pay rates but also of forcing workers to do overtime and then forcing them to cover this up. The way she frames this cover-up is different from that of other complainants discussed in Chapter 3: she does not see this as a form of lying but a two-fold legal evasion. While the threat from the management is not made explicit in the quote, it is presumed that workers are in fear of losing their jobs if they do not comply with management’s demands.

In addition, the letter also raises further complaints about inconsistencies in reward and bonus payments. According to the Labour Code, rewards and bonuses are non-compulsory and are often issued on the basis of business profits. As it is difficult to apply the statutory legal terms in this case, the letter writer shifts towards a different type of reasoning. If the workers in Chapter 3 at times invoked the morality of workplace treatment in hope for the union’s sympathy, the writer in this case wants the audience to share with her the following commonsense observations and judgements:

Regarding our reward, we don’t know if there is any reward scheme in our company. In many instances, the amount of reward that we signed\(^{38}\) is high but the actual money received is very low. We don’t know what the company has done with the difference.

She moves on to give an example of the New Year bonus in early 2014, when the company announced a good bonus for employees and asked them to sign the payment list, but then failed to pay it in the end. Here she tactically exposes the truth: it is not just the workers’ labour that goes to make company profits but also their promised reward:

We are confused: what happened to the money? Isn’t it that our money is now used as part of the company cadres’ savings to earn their interest?\(^{39}\) We think that this matter is not only to do with labour relations but is a sign of cheating and grabbing other people’s property.

\(^{38}\) The company issued a list detailing the amount of reward that each worker would receive, and asked him/her to sign on that list. This was done before the actual payment.

\(^{39}\) Here she speculates that the cadres have taken workers’ bonuses to the bank to earn interest.
The accusation raised in the extract, framed in the language of labour relations, moves into the common language of cheating and stealing. It refers to the company’s violation as being not just an issue of labour law but also of being a civil impingement on other people’s property. The writer has moved freely between making claims derived from the Labour Code and other claims outside of it to stretch her legal accusations beyond its statutory terms. This explains why at the end of the letter, the writer explicitly suggests that ‘the company’s conduct indicates criminal behaviour’ that requires further intervention of the state beyond administrative measures.

Besides requesting the state to investigate and solve the company’s illegal conduct, the letter also astutely requests a solution to rectify existing workplace problems, which makes it stand out among all other pleas and requests discussed thus far in the thesis:

The current law has stipulated different forms of democracy in the companies. Therefore, besides resolving previous issues, could you give orders to enhance democratic practices in the company, especially with respect to bargaining and dialogue? Doing so would ensure that employees’ voices are heard at the very grassroots level, and their rights and interests are made transparent and can be monitored by employees themselves.

The current Labour Code contains several references to workplace ‘democracy’.\textsuperscript{40} For instance, Article 5, on ‘rights and obligations of workers,’ stipulates that workers have the right to ‘implement regulations on democracy and consultation at the workplace to protect their lawful rights and interests.’ Article 6 also adds that an employer has the obligation to ‘comply with regulations on democracy at the grassroots level.’ While the term ‘democracy’ reappears in further provisions concerning workplace dialogue and communication between employers and employees, there is scant attention in the rest of the Labour Code to the functioning of workplace democracy and its significance within labour relations. None of the workers I interviewed nor the letters I analysed made reference to this term. Drawing again upon a relevant term in the Labour Code, Nguyễn is asking for workers’ voices to be heard, for the workers to be able to know their rights and interests, and for workers themselves to have oversight of these issues through bargaining and communication channels. It is not only

\textsuperscript{40} Despite being a one-party authoritarian regime, the term democracy (dân chủ) is not alien to Party rhetoric and state legislation.
a call for proper implementation of labour law but also a plea for the workers’ role in the production process to be properly acknowledged and enforced.

Overall, the letter has framed most grievances and requests within the boundary of labour law and invoked the state’s legal responsibility to rectify legal violations. Despite her confrontational language and her expansive use of labour law, the writer has been careful to wrap her accusations and requests with officially sanctioned rhetoric. These violations and mistreatments are also cast against the title ‘labour hero’ of the company awarded by the state, referred to at the start of the letter. There seems to be a moral outrage alongside the frustration with the company’s illegal conduct.

As the resolution of her complaint letter failed to bring a favourable outcome for her and her fellow workers, Nguyễn sent another denunciation letter to the provincial bodies and labour authority in June 2015. This letter is, by name and nature, more serious than her previous complaint letter. She restates her previous allegations and adds that ‘the chief labour inspector checked the company but I don’t understand how come the company committed more violations after that’. Similar to the last letter, workers’ grievances are framed in a confrontational and legalistic manner:

According to the legal regulations, overtime hours must not exceed 4 hours per day, 30 hours per month and 300 hours per year. As the company has recently had many orders, it gives workers voluntary overtime sheets, forcing them to sign and organising overtime consecutively from 4pm to 6pm. However, to ‘legitimise’ the overtime hours according to the regulation, the company has forced workers to sign off their cards at 5pm. I didn’t sign the overtime sheet and didn’t want to work overtime but the company forced me to do so and did not let me go home.

The extract also reveals Nguyễn’s attempted refusal to obey the management’s order to work overtime. It is an outright resistance to an unlawful act of coercion and further trick to cover it up. Her attitude is different from that of other complainants, discussed in Chapter 3, who admitted that they reluctantly followed company rules rather than risk being disciplined or dismissed afterwards. By mentioning her outright disobedience of the management’s order, she seems to want to distinguish herself from her fellow workers, few of whom are willing to speak up, while at the same time drawing attention to the shared injustices they all face. In this regard, Nguyễn has tactically put forth her individual voice and resisting behaviour to support her arguments for broader problems of a collective nature.
Apart from the previous legal accusations, this denunciation letter also contains an issue that touches upon human dignity and bypasses an aspect of labour law. This last accusation is the shortest, but perhaps the most sharply worded, of all the complaints raised in the letter:

The company these days also enforces a rule that violates human rights: after two months of internship, a [female] employee has to do a pregnancy test and will have a labour contract signed only if tested not pregnant. This practice is humiliating especially for unmarried people.

In legal terms, this practice violates Article 154 of the Labour Code, which stipulates that an employer is obliged to ‘ensure the implementation of gender equality in recruitment, employment and training.’ Nguyên’s accusation is not directed at it being a discriminatory policy towards female employees, but a humiliating act. While there is a strong social stereotype against pre-marital pregnancy in Vietnam (Gammeltoft 2014), demanding unmarried women take this test is seen as demoralising. The complaint in this case is not framed within the public/legal but the private/moral sphere and implicitly appeals to the state’s moral obligations to female workers.

Attached to the typed pages is a page in her hand writing in which she invokes the Party’s rhetoric, its moral authority and campaigns on cadres’ conduct. The language and sentiment expressed in her hand writing are different from the predominantly legalistic language in her previous complaint and denunciation letters. It seems that when legal reasoning was exhausted to no avail, she decided to opt for an emotional appeal to justice. This stands in contrast to the situation of a worker named Thắm, whose letter made the headlines and was discussed in Chapter 3, as Thắm and her fellow workers, after their spontaneous strike actions had failed, considered engaging with law as a last resort. Nguyên herself is not a Communist Party member, yet she derives her judgement from the Party’s political campaigns that she sees have laid the ground for one’s legal and moral behaviour. She wrote this letter shortly after the Party Congresses took place at the local levels in Vietnam, which saw the passage of key development agendas and the election of new local leadership.

I shall hereby quote the letter in full to do justice to its extraordinary nature:

During this time, all citizens and party members across the country, including Đồ Nai province, are following the law, self-educating and self-training according to the moral lessons of Hồ Chí Minh, in order to make certain achievements before the Party
Congress at the local level. Unfortunately, there is an enterprise that violates the law, despite being awarded the title ‘hero in the reform era’ and having a Party cell. Within the party cell, there are party cadres that have verbally abused and humiliated employees. Yet those cadres are always nominated for reward and are holding the positions of the union chairman or vice chairman in the company. So, who will demand equality (công bằng) and legitimate rights and interests for employees?

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

Because of the wish to demand equal rights and interests for employees, I have sent my petition letters, which have been handled by the state authorities and especially the labour inspectorate. However, those cadres only worked in a cosmetic manner and protected the business; they also forced me to sign a meeting minute in which I have to confirm that I will stop sending my complaints and denunciations. Such command has given the ground for the company to punish and repress me in a brutal manner.

I am wondering if there is no justice (công lý) or equality in our lives, in our society. I guess that I might be agonised and pushed until death before my letters are resolved.

Nguyễn’s letter bears resemblance to the type of rightful claims made by aggrieved citizens in China (O’Brien and Li 2006), who mobilise official discourse and legal institutions to curb the power of corrupt and abusive elites. However, Nguyễn also effectively combines her knowledge of labour law and official rhetoric with fundamental moral principles to tell a story of her and other workers’ suffering. Her pitiful claim that employees ‘have no rights’ while experiencing ‘a lot of coercion’ implies a breach of both ethical and legal standards on the part of the business and indirectly, of the state, for condoning the business’ conduct.

Similar to Thắm’s published letter discussed in Chapter 3, Nguyễn’s also raises the abuse of legal rights and human dignity and passionately calls on the state for those rights to be protected. The difference is that, while Thắm derives her demands mostly from her and other workers’ experiences on the shop floor, Nguyễn arrives at her plea by extensively drawing upon political rhetoric which has been ironically betrayed by the people in high positions supposed to act upon its principles. As such, despite the legally adept complaint language in Nguyễn’s type-written letters, her appeal to justice is not so different from that of other ordinary workers: she also holds the state authorities accountable for the workers’ plight and stretches the boundary of law and legal rights to push for an honouring of workplace ethics.
More importantly, in connecting workers’ grievances to (the lack of) justice and equality ‘in our society,’ Nguyên eloquently wedds her aspiration for workplace ethics to the fundamentals of the Vietnamese state’s socialist vision of equality and progress.

Mrs. Nguyên’s language of resistance contributes a Vietnamese case study to existing debate on the role of legal discourse in social justice in American socio-legal scholarship. Central to this debate is whether legal discourse is useful to popular resistance and activism, or instead circumvents the types of claims and actions that people and activists can take in seeking redress and bringing about social change (McCann 1994, Lovell 2012, Albiston and Leachman 2015). George Lovell has refuted the negative proposition while revisiting this debate in his book on American citizens’ complaint letters in the 1930s and 1940s. Lovell asserts that, while these citizens readily deploy discourse and language adopted from state law, the law does not ‘set an outer limit on writers’ demands’ (p.202). The complaint writers are found to either see law enforcement as illegitimate and unjust, or project their own views of justice as resistance to law’s authority. These observations resonate with Nguyên’s expanded demands in her typed and hand-written letters, which raise accusations about management’s violation of workers’ dignity and a call for equality in workplace relationships. Different from the American citizens mentioned above, in projecting her own view of justice echoing the state’s socialist vision, Nguyên does not object to or lose faith in the law, but uses her own view to support an earlier call for legal justice put forth in the typed letter. I therefore concur with Lovell’s position and join his call for a revival of interest in legal discourse and resistance.

With regard to existing literature on workers’ consciousness in post-socialist regimes, Nguyên’s case shows that the path from consciousness raising to resistance is not so straightforward. Similar to other core workers, Nguyên has claimed to build rapport with her fellow workers by advising them about their legal rights and helping them to claim individual benefits. However, such rapport has not sufficed to transform her own struggle into collective actions. Having spent more than a year on this petitioning journey, she had not managed to garner her co-workers’ support for her petitioning. The only role they were willing to play was to let Nguyên see their pay slips and use them as evidence for the writing of the letter. For instance, her second denunciation letter mentions the names and incomes of two female workers, as well as her own, as examples of the company’s unlawful wage policy. Apart from
that, Nguyên has taken the path of collective petitioning on her own, being the only worker that signed and lodged the letters. She repeated that other workers were afraid of losing their jobs and facing managerial discipline. Nguyên revealed to me that, following her petitioning, the company manager and supervisor warned workers on the shop floor against talking to, or even ‘coming close’ (t汲取) to her. In one instance, a female fellow worker raised her voice about an unfair practice to the manager and was questioned whether Nguyên was implicated in her speaking. Her co-workers therefore would rather keep their silence to keep them safe from further trouble.

In short, Nguyên’s access to labour law and legal aid has led her to actively engage with legal language and channels to demand justice for herself and fellow workers. The legal knowledge she has gained has confirmed her conviction that her struggle is legitimate and that her demands should, by law, be met. Her letters contain language derived from labour law, the Party’s rhetoric, and a moral judgement of managerial conduct. In other words, law, morality and political discourse interweave with each other in shaping her claims and expressions of injustice. It is her faith in legal justice, and more dimly, the ethics of state officials, that lays the ground for her enduring struggle with a labour institution that has been notoriously skewed against workers’ interests (Sidel 2008).

**Case 2: small-scale mobilisation**

Mr. Anh also acted with law to demand workers’ rights and interests, and he had a more positive experience in mobilising his fellow workers. Anh is still single and has been employed in a steel company in Hồ Chí Minh City (HCMC) for two years. Before moving to the city, he worked in a garment company in Đồng Nai province and therefore had a chance to join the core workers’ project. Like Nguyên, he had deployed legal weapons to solve his individual dispute with his previous employer, but managed to win his case.

His dispute with the previous company started when he refused to obey the orders of a female officer who was not in charge of supervising him. This female officer later arbitrarily accused Anh of threatening her to the human resource manager. Subsequently, the human resource manager transferred him from his manual task to an administrative position, which Anh sees as unsuitable to his skills and educational background. After his refusal of the transfer for this reason, Anh was ordered to sit in the security office doing nothing for the whole day, and was subject to strict surveillance. He appealed verbally and in writing to the union of the
industrial zones, the Labour Federation, and his case was made known to a labour journalist. The journalist reported his story in detail, expressing the sympathetic attitudes of the Labour Federation, who hinted at intervening if the company management persisted in its discipline.\footnote{I have withheld the reference to the news to protect Anh’s identity.}

After the publication of his case, the company management reassigned him to his previous position, yet put him under strict control. At the start of a work day, he received a task ‘report,’ which showed the number of tasks that he had to finish within a day. Then he had to report on his task completion at the end of the day. He said: ‘It made me bored and angry.’ (27/2/2015) Not long afterwards, he was dismissed after the New Year holidays. The company claimed that he took extra leave days without any notice. He did not dispute the company decision and quit the company.

In recounting his story, Anh told me: ‘By law, an employer can sack an employee if the employee takes five days off in a month or 20 days off in a year, in an undisciplined way. That is not my case’ (27/2/2015). It was unclear to me whether Anh had a thorough understanding of labour law at the time he quit, but he recalled clearly his decision to sue his employer about 10 months later. With the LAC’s assistance, he won the case and received full compensation from his employer, including wages for the days he was out of work, insurance benefits, and a two-month wage penalty. His successful litigation, with the assistance and moral support of the LAC lawyer, contributed to Anh’s confidence in the enforcement of labour law. Anh joined the core workers’ project shortly afterwards. Subsequently, he employed this experience and his legal knowledge to take forward a collective labour dispute.

The steel company, his new employer, used to be a state company and became a joint-stock company in the 2000s. The company however continued to apply the common minimum wage, which is the legal wage for state employees, rather than applying the minimum wage set for foreign and private business sectors. With consultation from the LAC, Anh learned that such a wage policy is illegal and decided to act against the company management.

The following transcript from our interview summarises the situation of Anh’s co-workers: ‘You know, many workers have been employed for more than 10 years but their wages are
very low, standing somewhere around 3 or 4 million dong’ (22/3/2015). His statement points to the imbalance between workers’ long service to the company and the low wages they receive. Anh then went on: ‘Those workers don’t know about labour law and have so far accepted the amount given by the company’ (22/3/2015). He attributes the disadvantageous position of his co-workers to their lack of legal knowledge and their passive compliance towards the company’s wage policy. He seems to see the issue as their ignorance rather than the company’s malpractice, and as such, has decided to embark on his resistance by taking his time to inform other workers about their legal rights.

Apart from his legal knowledge, there is another reason concerning workers’ livelihoods that explains Anh’s decision to initiate workers’ actions:

I stand up [against the company] since I know the law and I am not afraid of being sacked. It is possible that the company management will sack me if I sue them. But I am not so needy or desperate for this job. If I quit this job, I can find a new job at some other place. Other workers are different: They are older than me and moving jobs is difficult, so they need to attach themselves to this company (HCMC, 27/2/2015).

Anh’s explanation sees other workers’ acceptance of the company’s pay rate as relating to job security and seniority. He understands that losing one’s job is a possible outcome when one resists, and realises that his flexibility will allow him to overcome such a scenario better than other workers. However, the extract does not indicate a trade-off between resistance and one’s own livelihood. Instead, it shows that workers’ needs and lawful rights should be fulfilled without them falling into exploitative relationships with the company management.

As I mentioned in a previous section, core workers are aware that taking strike action is illegal, and Anh is no exception. He even went further in articulating his attitudinal change towards strikes as a result of the legal training: ‘Before I learned about the law, I thought that going on strike is right. Later I knew that it is wrong, because it goes against procedures.’ His attitude subsequently influenced his plan to act:

After I talked to my fellow workers about the company’s wage policy, they really wanted to go on strike but I talked them out of doing so. I told them, ‘I will rise up (đirtschaft ra) and work out the paperwork and procedure [to sue the company]’. I told them to wait until after the Lunar New Year. Then, if the company did not raise our
wages, I would ask for some advice and write the complaint letter (HCMC, 27/2/2015).

The Lunar New Year holiday had passed when I had this conversation with Anh in 2015. What he meant in his conversation with his fellow workers was that they should wait until receiving their first payslips after the holiday. Anh’s discouragement of striking can be seen as a result of both his legal understanding and his moral integrity. In his view, it is problematic to condone illegal reaction, or act in an illegal manner, in response to unfair conduct. He therefore believes that the rightfulness of workers’ resistance will stand them in good stead in their pursuits, despite being aware that the complaint process will take a long time:

I understand that the time taken for the authority to address our letters is long and is a disadvantage to employees. For instance, if I write the letter and lodge it at the end of March, it may not be addressed until May. However, we have to accept that (HCMC, 27/2/2015).

Anh’s critical judgement of the lengthy legal process as being a disadvantage to aggrieved workers does not affect his legal compliance. Consequently, his further actions, including mobilising the support of his fellow workers, were taken within the administrative channel sanctioned by the Labour Code.

After our conversation, there was some delay in the writing of the complaint letter, due to the company management’s verbal promise to raise workers’ wages following the voicing of their concerns and queries. The complaint process did not start until October 2015, when Anh and 14 fellow workers working in the same group and shift together signed and lodged a complaint letter to the company management. Of course, Anh’s mobilisation of others was not without challenges. Anh told me how he took his time to get other workers to his side and that it only worked with workers who ‘are not afraid [of management’s threat and retaliation]’ (không sợ) (14/1/2016). There were hundreds of workers in other groups and shifts that Anh was unable to mobilise or even approach.

The workers’ letter reads:

We are a collective of workers in company X, together writing this letter to request the company management consider raising the basic wages for workers according to the Government’s regional minimum wage regulations. Our understanding is that the
regional minimum wage for HCMC is 3.100.000 dong. If employees have manual skills and have worked for a long time, their wages should be at least 7 percent above the minimum wage. However the basic wages of many workers like us are currently below this level.

The Government decree number 103/2014 on 11/11/2014 has been in effect since 1/1/2015, but up until now the company has not raised basic wages for workers. Therefore, the contribution towards our social insurance based on such wages is too low and does not guarantee the rights and interests of employees.

With due respect, we request the company management to consider this issue, otherwise we have no choice but to send our letter to the state agencies.

Similar to Mrs. Nguyên’s typed complaint and denunciation letters, this letter refers to the government policy and employs legal reasoning to justify workers’ demands. As this letter is directed at the company management, it reads like a gentle request and reminder rather than containing strong confrontational language. The subsequent inaction and silence from the management saw these 14 workers send their complaint to the labour inspector of the Department of Labour in HCMC. I did not get to see the second letter but according to Anh, the content of both letters is the same. The legal language employed in their collective request letter demonstrates Anh and his fellow workers’ belief in law as a potential bargaining tool vis-à-vis the management, and also in the state as a guarantor of their legal rights amid the management’s arbitrary conduct.

So far, the resistance narratives of three core workers have brought into life aspects of labour law that are not present or well articulated in the narratives of ordinary workers. In all of them, the legal knowledge they have obtained leads them to understand existing abuses and exploitation as legal problems and be aware of their right to contest this under the law. Their accounts suggest the potential of law and workers’ access to law and legal aid to achieve social change; specifically, to alter managerial practices and improve workers’ situations. However, different from Lê, Anh and Nguyên are not shy about exposing themselves and their intent in acting against management. Lê and Nguyên both have family commitments, while Anh does not, but Nguyên’s and Anh’s desire for justice has overridden their worry about managerial retaliation and surveillance. The resistance of Anh and Nguyên further challenges Chan and Siu (2012)’s proposition that workers’ pursuit of individual rights and the gaining of individual redress deter them from taking actions that benefit workers as a collective. These workers’ individual actions do not stop them from acting on behalf of, or
mobilising others, to demand better wage and benefits. Of these three workers, Anh has been the most successful in raising his fellow workers’ awareness of the company’s legal violations and mobilising them to act. Yet, as I will later show, Lê has survived his covert resistance without negative reactions from the management, whereas the other two have been subjected to managerial discipline and mistreatment following their overt actions.

The resolution of complaint letters and core workers’ plight

In this section I investigate the process of resolution and the outcomes of Nguyên’s and Anh’s petitioning. Earlier, I showed that these workers have different experiences of using the legal and official avenues to solve their individual disputes, and of mobilising their fellow workers in complaint writing. However, these workers both express their conformity to the Labour Code and therefore are obliged to take actions as it prescribes. Yet in order to fully understand these workers’ legal consciousness, it is necessary to look beyond their actions and the meaning of their writing towards the process of resolution and what they realise or obtain from their resistance. By choosing to engage with the official channels, these workers agree to conform to the power and authority of the state and unions. But do their experiences in engaging with the system change or confirm their existing legal consciousness?

Case 1: Nguyên

After Nguyên’s first complaint letter, the labour inspectors held a resolution meeting with her and the company management. Despite the collective nature of her complaints, she was the only worker invited to the meeting as the person who lodged and signed the letter. She complained to me about participation in the meeting: ‘There is no impartiality for employees. The person representing the company union at the meeting is the union chairman and the vice manager. How can the vice manager act as an employee representative?’ (1/2/2015). A union official of the provincial Labour Federation was also present only to take notes. During the meeting, she recalled how the labour inspectors skirted her concerns, put psychological pressure upon her, and tended to talk in favor of the company management. The patron-client relation between the labour inspectorate and the management was clear to her as they had lunch together after the resolution meeting. She also suspected that the chief inspector had notified the management of her complaints before the meeting, as the company asked her to withdraw her petition before the meeting took place.
The more this woman understands the function of the Labour Code and its meaning concerning workers’ benefits, the more disenchanted she becomes concerning its implementation. Following the resolution meeting, the labour inspector sent a formal letter of response to her, indicating that the company was found to be in the wrong in two out of the five issues being raised. Yet no punitive measures nor follow-up investigation was outlined. As she clarified to me, the company still had not addressed these two problems and the lack of transparency still persists in its wage and bonus payment. She remained further subordinated to the management and labour authority precisely by conforming to the ideals of the law and its institutions.

As briefly mentioned earlier, Mrs. Nguyên’s language in judging the company’s conduct is strong and straightforward with a clear awareness of workers’ legal rights and injustices, expressed in phrases like ‘against the law/legal regulations,’ ‘violate the law,’ and ‘rampantly “steal” employees’ money.’ Such language stands in contrast to the formalistic side-stepping tone of the labour inspector’s response letter to her: ‘The company’s conduct is not yet right/appropriate according to the regulations;’ ‘the chief inspector requested the company manager to stop/do this;’ and ‘the inspection team requested the company to check the issue and coordinate with the company union to respond with clarity to employees.’

The inspector’s language is as soft as the investigation carried out within the company during the time of the complaint resolution. For instance, two of the complaints raised in the letter concern the premium overtime rates that are not paid and how workers are coerced into working overtime. The inspector reported that the company applied premium rates at the same rates as were stipulated. Regarding the second issue, the inspector responded: ‘After we checked and talked directly to several employees, we found no sign of the company’s coercion.’ In our conversation, I shared with Nguyên the speculation that the ‘several employees’ that the inspector talked to had either been silenced through intimidation or were pre-selected by the company management. Overall, in response to her five complaints, the inspector found one violation in relation to social insurance and assured her that the general manager had been ‘requested’ to correct the company’s wrongdoing. This refusal to properly address workers’ concerns and the continual siding with management are illustrative of the weak regulation of labour laws (Sidel 2008), where the administration of the law does not provide fairness but rather the protection of a company’s wrongful practices. In this sense,
law has been bent to serve the powerful and resourceful rather than being an effective ‘weapon of the weak’ (Scott 1985).

Throughout her resistance and experience with labour law, Nguyên has developed a form of legal consciousness which I coin ‘critical consent,’ that is, an adherence to the ideals and principles of law coupled with an acute recognition of its practical limitations. The word ‘consent’ incorporates what Ewick and Silbey (1992: 747) describe as acts of deference to legal procedures and authority, but speaks more broadly to an individual’s beliefs. My understanding of consent here is also different from that widely used in the literature on labour process, where consent is an outcome of managerial coercion and threat to extract labour and elicit obedience (Burawoy 1979, Burawoy and Wright 1990). Nguyên’s consent comes out of her access to legal training and legal aid, rather than being forced upon her by any coercive or retaliatory measures. Her consent to the law becomes a major thread in her resistance against low pay and maltreatment.

Nguyên’s situation bears some resemblance to the ‘informed disenchantment’ of litigant workers in China (Gallagher 2006), who approach the legal system with a high expectation of justice yet are later let down in their actual experiences. However, while ‘informed disenchantment’ mainly refers to the ebbs and flows of workers’ expectations concerning the functioning of the legal system (Gallagher 2006: 785), the notion of ‘critical consent’ refers more broadly to workers’ views of how law should work in shaping the behaviour of workers, management, unions and the state. The word ‘critical’ is used to highlight core workers’ evaluation as to how and why the implementation of law is not impartial and just, rather than their feeling of disappointment. Such evaluation results in the statement of a need for a moral role to be taken up by the agencies and actors in charge of its implementation.

Nguyên therefore hopes that her letter might reach a good-hearted official who would take her complaints seriously and deal with the company’s conduct thoroughly. As detailed above, her frustration with the resolution and its outcomes did not stop her from pursuing her case by lodging the second denunciation letter. Nonetheless, Nguyên was also thinking of other extra-legal strategies, not because she has given up her consent to law, but because of the potential for other strategies to amplify her call for justice. In our conversation, she kept

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42 Gallagher made clear that the reason for their disappointment was not only to do with the outcomes of the lawsuits, but also to do with the complicated procedure.
mentioning the case of female worker Thắm, whose letter to the VGCL Chairman made the headlines as I discussed in Chapter 3. She hinted at her intention to appeal to the Chairman if the company’s violations persisted. She also tried to contact two labour journalists in the hope that media reports would put further pressure on management to change their behaviour. While one labour journalist became silent after a few initial correspondences, the other journalist advised her to seek assistance at the legal aid centre of the Labour newspaper in Hồ Chí Minh City.

For the past two years, at each stage of her petitioning journey, Nguyên has faced and will face a personal choice to continue working at ease and staying silent, or raising her voice and risk disciplinary action. To her, this petitioning journey is both a legal and moral battle against abuse and exploitation:

Other workers told me that if I left the company, the management would be very happy but they would suffer. I know the law and I dare to speak up; I am the only one among 700 workers. I didn’t give up because I know there are people more miserable than me. I am a core worker belonging to the labour federation so I’m not afraid, and the company can’t sack me (Trang Bom 1/2/2015).

The transcript is telling in two regards. First, Mrs. Nguyên is proud of being a core worker, and of her legal understanding, which she thinks has been a ‘shield’ for her to remain in the job. Had the management treated her as an ordinary worker, who is unaware of labour law, they might have found some way to sack her and got away with their illegal dismissal. Nguyên told me: ‘They [the management] should think twice about getting rid of me. If I bring them to the court, the case would badly affect their reputation and their title [the ‘labour hero’ title granted by the state]’ (1/2/2015). Second, her access to law imbues in her the sense of responsibility and courage to speak up against unfair practices, which is also bolstered by her emotional binding with fellow workers. I believe that, in the previous transcript, Nguyên wants to highlight that she is one of those suffering rather than setting herself apart from her fellow workers. It seems to me that, eventually, her deployment and exhaustion of the legal weapon all contribute to her moral cause of making workers’ lives, including hers as a single mother, less miserable.

Case 2: Anh

While the resolution of Nguyên’s complaints was mishandled through the patron-client network between the management and labour authority, Anh’s letter was answered by the
management’s surveillance and evasive tactics. Anh faced strict discipline at work after the lodgement of the complaint letter. In October 2015, he took a day off work without asking for managerial permission. The management later called him in to a meeting with the human resource manager, and the union chairman. He recalled:

They discussed with me three options. First, I could write a resignation letter of my own accord. Second, the company would unilaterally terminate my contract with a 30-day advance notice. Third, the company would sack me. Given my mistake [of taking a day off without permission], are they right in giving me those options? (Biên Hòa 28/12/2015)

The rhetorical question he raised to me illustrates that legal provisions become a benchmark for him to judge management’s conscience and conduct. Following the meeting, Anh did not dispute any of the management’s proposals and quit his job. Three weeks later, in mid-December 2015, someone from the company came to his place to re-employ him, to which Anh finally agreed. The company also paid him compensation for the number of days he was out of work, and an extra two month’s wages.

During the time Anh was out of work, the labour inspectors had a meeting with the management in regard to the complaint letter but without any worker participation. After that, the management held individual meetings with all workers who signed the letter, excluding Anh. The management asked these workers to sign an agreement accepting wage increases starting on 1st January 2016. Anh was unhappy that his fellow workers followed the management’s order but it was too late for him to intervene in the outcome. Again, in Anh’s view, his fellow workers’ passive consent to the management order is to blame for the failure of workers to successfully resolve wage issues with the management:

I wasn’t there to tell other workers not to agree to what the management told them, and therefore they all accepted it. If I were to be called upon to the meeting, I wouldn’t agree with the management. I would present to them the government decree. You know, the company kept saying to employees that its business has difficulties, but

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43 The company’s efforts to re-employ Anh took me by surprise. Anh did not know exactly why: ‘I don’t know how or why the company knew that it was in the wrong. Maybe because the company was afraid that I would later take it to the court. It could be because of our petition letters. Maybe the labour bureau called the company and asked about me. The municipal labour bureau has known me well through my legal aid to other workers.’

44 Anh did not tell me whether such increases would lift their wages up to the levels prescribed in the government guidelines.
employees’ lives are also difficult. There are people employed for more than 10 years but their wage level is really low [italics added] (HCMC, 14/1/2016).

Again, Anh firmly believes that he is able to employ the legal regulations as buffers against the company’s excuse for its legal non-compliance. He seems to expect that legal language is weighty enough for the management to attend to his voice and rectify their conduct. Eventually, Anh also criticises the lack of morality on the part of the management: the management’s excuse for its evasion of the law also means an ignorance of their moral obligations to workers’ lives. Here his general framing of workers’ wages as low is quite similar to the justification given by ordinary respondent workers and letter writers. It represents a subjective and comparative judgement of income level based on workers’ seniority and their working lives at large. Broadly speaking, Anh’s account suggests that the labour-management relationship should function on the basis of both legal and moral considerations.

Anh’s experiences with the law in his individual and collective resistance have been more positive than Nguyên’s experiences, though at the same time he confronted abuse and unfair discipline from both his bosses. First, Anh won in his lawsuit against illegal dismissal. Second, while his mobilisation through complaint writing led him to be dismissed, Anh also thought that his letter and his legal knowledge were the reasons for the management’s re-employment of him. He kept mentioning to me the necessity of knowing and keeping up to date with government decrees and legal amendments, as this allows him to effectively ‘talk’ (nói chuyện) with the management.

Anh’s legal consciousness can also be characterised as one of critical consent, as he understands the benefits and limitations of law in workers’ pursuits of justice. Up until this point, except for his previous complaint about the lengthy time of petitioning, to Anh, the practices of law when needed had re-enforced his position vis-à-vis the management and been on the side of the workers. While the letter that he initiated workers to lodge relies exclusively on a legalistic mode of reasoning, he is well aware of the moral implications behind this legality. The narratives that surround his bold actions have effectively brought to life the minimum wage principle that provides for a guarantee of employees’ welfare written within the Labour Code.
Yet, after the Lunar New Year 2016, Anh and more than 50 other workers were dismissed. The reason given was that the company was undergoing restructuring and had to reduce its staff. Anh knew that such dismissal is illegal but decided not to dispute the decision. He is not currently seeking factory work and has taken up some unstable casual jobs to get by.

**Conclusion**

This chapter has analysed the way legal aid contributes to labour resistance through the cases of core workers. Core workers’ roles as both legal aid providers and recipients have contributed to shaping their views concerning the labour law, justice, and how to demand justice for themselves and fellow workers. I have also stressed the importance of social spaces outside the purview of the state and management, such as workers’ rental units, in enabling and facilitating the exchanges between core and ordinary workers. This chapter delves into the case studies of four core workers, each with different experiences and positions within their workplaces, where they have encountered legal violations and labour disputes. In putting their legal knowledge and awareness into practice, these core workers have either shown their support towards strike actions, assisted with collective complaint writing, or been directly involved in writing complaints.

Unlike other workers discussed in previous chapters who only refer to labour law in sweeping terms, the core workers actively engage with legal procedures, terms and regulations in articulating their views of the workplace relationship and in responding to their grievances. These legal regulations underpin core workers’ judgements of what is right and wrong, what is fair and unfair in employers’ and workers’ behaviour, and allow them to directly confront unlawful conduct. Core workers’ involvement in legal aid activities endows in them a belief in a rightful struggle and the courage to stand up against injustice. However, their language of resistance does not stop at a call for a proper implementation of law. It also brings out the moral values imbued in management’s legal obligations, and extends the legal rights claim to assert a broader call for social justice.

Furthermore, the investigation of Anh’s and Nguyên’s experiences with dispute resolution following their resistance sheds light on the complexity of core workers’ legal consciousness. Their critical consent denotes an adherence to law’s rules, regulations and principles, as well as a recognition of its weaknesses in protecting workers’ rights and interests. Their individual
actions, and the way they interact with other workers, further suggest that legal consciousness nurtures rather than constrains a sense of class consciousness.

The findings of this chapter contribute to the scholarship on labour relations in Vietnam by drawing attention to the role of legal aid in promoting workers’ rights and interests. While the success of the LAC in demanding redress for the workers, as evidenced in this chapter, has been mixed, it is undeniable that it has raised workers’ awareness of legal violations and enabled or facilitated their acts of resistance. The two in-depth case studies covered here also add to the broader literature on legal aid in post-socialist regimes by suggesting the potential of legal aid in enabling workers’ collective mobilisation, rather than just their individual pursuits of justice. At the same time, the evidence also cautions against a uni-linear approach towards legal aid and workers’ collective attempts to stand up for their rights, considering the surveillance, threat and potential retaliation faced by core workers and their co-workers. Finally, this chapter contributes Vietnamese case studies to the broader socio-legal scholarship on law and social change, in showing the moral underpinnings of law in shaping workers’ evaluations and the potential of legal actions to alter workplace practices. I stress that, as can be seen from the core workers’ narratives, law does not necessarily alter, challenge or negate existing social values and norms, such as those that concern mutual respect, reciprocal obligations, and the socialist ideals of equality.
CONCLUSION

This thesis has addressed the question: ‘How does labour law shape labour resistance in Vietnam?’ by focusing on cases of factory strikes, complaint writing and petitioning. This question cannot be adequately answered by treating law merely as a set of written rules. Instead, I have analysed labour law as a combination of (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 Code 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 the Code and associated state policies and regulations are implemented (or not implemented) by officials, factory managers, and others.

The thesis has aimed to understand to what extent and how labour law influence the way factory workers justify their claims against abusive management. The above conceptualisation of law allows me to grasp how meanings, values and practices of law unfold in workers’ experiences on the factory floor in the lead-up to their resistance and in their aspirations for justice. My objective has been to examine how values embedded in the labour law regime interact with other values and practices that come from outside labour law, and to draw attention to the tacit way in which these values influence workers’ claims and acts of resistance.

Drawing on qualitative fieldwork research conducted in Đồng Nai province, the thesis 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 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 socialist ideology and customary Vietnamese social norms and precepts.

I have shown that there are gaps within existing strands of literature, inspired by political economy, moral economy, and rightful resistance approaches, in explaining workers’ resistance and their engagement with or avoidance of law. The political economy approach sees law as part of the superstructure that creates and entrenches the machine of exploitation
and as such downplays its enabling effects on workers’ struggle for their rights. Studies inspired by the moral economy framework neglect the role of law in shaping individuals’ views of justice, while those inspired by the rightful resistance literature pay inadequate attention to the relationship between law and non- or extra-legal discourse in aggrieved citizens’ framings of demands and grievances.

My understanding and analysis of labour law has been inspired by the socio-legal approach. This approach examines how law operates within a range of social interactions, activities and contexts. My analysis has benefitted in particular from the two strands of socio-legal inquiry that look at people’s disputing behaviours, and their legal consciousness. First of all, an examination of events, incidents, and experiences prior to workers’ resistance is needed to provide insight into how they understand and respond to injustice. Secondly, an examination of workers’ views and perceptions of law is undertaken to evaluate how law is useful in their desires for justice. My approach differs from existing socio-legal research on labour resistance in China in that it pays greater attention to workers’ interpretations of their experiences at work that relate to or trigger their grievances. In interviews and workers’ letters, I additionally find that those grievances are not just related to workers’ experiences on the shop floor, but also to their desire to earn a decent living. I also tease out the values implicated in workers’ language and stories to make sense of their rights and/or legal consciousness.

Workers’ retelling of shop floor interactions, their justifications for strike actions, their complaint letters and petitions, and their accounts of dispute resolution paint intricate pictures of desperation and hope, rights violation and rights claims, courage and disappointment, obedience and resistance. Most of the workers I researched went through a process of ‘naming’ and ‘blaming’ of what is unfair and problematic, and about a third also took action to claim their rights or what they felt they deserved. In their stories, labour law matters in different ways: at times it entrenches workers’ suffering and deters them from resisting; at other times it enables them to overcome their silence and offers a rhetorical tool for them to raise their voices. While many workers do not use the labour law regime to seek justice, others make full use of it and are able to evaluate its utility.
Rethinking law, morality and justice in post-socialist regimes

The broader literature on law and society in post-socialist regimes tends to treat law and other institutions and sets of moral norms and precepts as oppositional, conflicting, or separate from each other (see, for example, Phâm 2005, Gillespie & Nicholson 2005, Koh 2007, Yang & van der Wal 2014, He & Feng 2016). In these works, morality is associated with traditional norms and cultural beliefs that have shaped the functioning of politics and society throughout their history of development. State laws, which emerge during the course of economic transition, bring with them new rules, ideas and thinking that are not compatible or clash with pre-existing social norms and behaviour. Contemporary Vietnamese society, in particular, has seen a limited penetration of state laws. Despite a rather comprehensive legal reform and system developed since the 1990s, interactions between and within state and society are still heavily shaped by customary norms, precepts and informal practices, from patron-client networks between business and the state to local government’s policy implementation and the courts’ handling of disputes. Labour relations are no exception: despite the state and VGCL’s rhetoric of promoting legal compliance and legal understanding, in their actual practice of settling labour disputes such as strikes, local governments and unions have often deployed a verbal appeal to sentiment to seek compromise between disputing parties. In addition, a conflictual relationship between law and morality is evidenced through numerous protests and petitioning in Vietnam, where, as in China, disadvantaged people contest, reject or bypass the letter of the law and invoke moral justifications for their claims and demands. In a similar vein, the way in which disadvantaged people appeal to the state also illustrates the eminence of the state’s moral obligations embedded in socialist propaganda. To date, little has been known, though, about how the Constitution or constitutional values penetrate social relations and state-society interactions in Vietnam.

While acknowledging the role of moral norms, emphasised by previous scholars, this thesis does not treat law and morality as always separate or oppositional but instead posits that their relationship is fluid and complex. In this study, such a relationship manifests in the varied ways in which factory workers justify their grievances and express their desire for fairness. In the following paragraphs I will unpack this relationship while discussing the thesis’ main findings in relation to the three sets of sub-questions outlined in the Introduction.
The first sub-question concerns the way in which workers make sense of their relationship with management, their workplace problems, and the role of the state and unions. Most of the workers interviewed and those who wrote complaints perceive this relationship in moral terms: they expect management to attend to workers’ living needs and treat them in a fair and reciprocal manner when it comes to remuneration, bonuses and treatment on the shop floor. Their ethics and expectations are similar to the moral economy of peasants in pre-capitalist societies. Only a minority of letter writers and the core workers evaluate employment relationships based on their understanding of labour law and expect management to fulfil their legal obligations to workers.

These different constructions of labour relations are accompanied by different framings of workplace problems. My analysis of interviews and letters reveal common problems and grievances concerning unfair and low wages, excessive working hours, discipline, coercion, abuse of female workers’ rights and workers’ dignity, and problematic bonus distribution. Workers most commonly describe these practices as unjust, but without referring to law. Instead, for example, they complain about immoral behaviour on the part of management, the uneven implementation of wage rises, management’s pursuit of personal interests and their ignorance, unequal treatment between workers of different sectors, and dismissal when business is slack. They perceive their situations as ‘unfair,’ or ‘unbearable,’ or their wage rise as ‘unreasonable,’ and complain at length about past experiences of coercion, harsh discipline and punishment. From an outsider’s point of view, workers’ accounts reveal management’s evasion and/or violations of the Labour Code, but the workers themselves do not articulate their sufferings as an outcome of illegal practices. In calling attention to their problems, workers refer to a combination of their material needs, their skills and productivity, their emotional bonds with and contribution to the business, and the treatment they deserve (but do not receive) as dignified human beings.

Only a minority of letter writers and the core workers interpret their grievances through the lens of labour law. They are able to point out what is problematic in management conduct from their varying understandings of the law. In both an explicit and indirect manner, they bring in legal terms and regulations, and where possible, provide evidence to show that the management have contravened them. They perceive their situations as ‘illegal,’ or ‘against the law,’ and desire a legal protection of workers’ ‘rights and interests.’ In an exceptional case, the complaint letter of Mrs. Nguyễn further calls for an implementation of workplace
democracy, an entitlement under the Labour Code, which allows workers to raise their voices and monitor management’s conduct. At the same time, core workers understand that workers’ grievances are also outcomes of management’s lack of care and their failure to meet their moral obligations to workers.

The way in which workers relate to the state and official unions is best seen in their appeal to these institutions, either in going on strike or in lodging their complaints and petitions. In this market regime, workers do not hold the state directly accountable for their problems. They nonetheless still believe that state and union officials, as those endowed with power and authority, are able to circumscribe managerial power and save workers from their suffering. Their appeal to compassion and sentiment is influenced by the state’s socialist ideology, specifically its promise to care for the welfare of the Vietnamese working class and its projection of an image of the socialist society as ‘rich, equal, democratic and civilised.’ However, as seen in the cases of the food-processing workers discussed in Chapter 2 and Mrs. Nguyễn’s resistance in Chapter 4, the state’s and union’s failure to deliver justice is sometimes deemed a problem of moral integrity and can erode workers’ trust in those institutions.

My second set of findings address the question of how workers use the language of labour law to voice their grievances and make claims. Most of the workers interviewed and those who lodged their complaints show a general understanding of the terms and regulations set out in the Labour Code and government policy concerning workers’ wages, overtime, working conditions and bonuses. They commonly couch their understanding of these terms and regulations in lay language such as ‘raising wages twice,’ or a rough estimation of working hours. The specific term, ‘rights and interests,’ found in the Labour Code, is often used to justify workers’ strike actions and appeals to the state and management. Both lay language and legal terms are, however, used primarily to amplify moral judgements embodying the norms of reciprocity, subsistence, and fair treatment, as mentioned above. In comparison, their use of law is very similar to that of Chinese workers who lodged their complaints at the Letters and Visits offices in the study by Thireau and Hua (2003) and the Chinese migrant workers in the construction industry, who were the subject of research by Pun (2016). Only a few workers, who lodge their complaints at the union offices, derive their judgements of management’s immoral conduct from their understanding of labour law, before driving home their emotional call for the union’s intervention.
Only the core workers employ legal language to explicitly condemn illegal, rather than immoral, practices, and call for a proper implementation of law. Their language of resistance is mostly shaped by their legal training and access to legal aid. The way in which core workers engage with law is similar to the behaviour described by other scholars as ‘rightful resistance.’ However, core workers also tactically combine their legal claims with moral ones. These moral claims are shaped both by the values underpinning certain articles of the Labour Code, for instance, Articles 186 and 187 on employers’ obligations towards employees’ social insurance and their pension benefits, and by socialist values of equality. In short, law and morality complement and are intertwined with each other in workers’ resistance and appeals for justice.

The third and last set of sub-questions addressed in this thesis relates to workers’ notions of rights. I find that workers invoke different notions of rights. The first, which is most clearly expressed, is legal rights endorsed in the Labour Code. These rights are articulated in conjunction with legal allegations of business’ rights infringement and references to articles of the Labour Code and other formal regulations. The second notion of rights is not explicit but can be inferred from workers’ appeals and their experiences of (un)fairness. In these accounts, they deploy the legal term ‘rights and interests,’ but their use of this term implies an understanding different from the way in which the term is used in the Labour Code, where rights, as separate from interests, refer to seven basic rights set out in Article 5 and to other terms agreed upon in the labour contracts and collective bargaining agreements. This second notion of rights captures workers’ moral worldviews of the labour-management relationship, valorising the guarantee of livelihoods, secure employment, and ethical treatment as workers’ entitlements. The last notion of rights concerns rights to equality, respect, and rights as human beings. These understandings of rights are in the minority: they are only expressed in Thâm’s published letter and alluded to in Nguyên’s hand-written petition. They emerge from these workers’ acute feelings of demoralisation and maltreatment, and are likely to have been learned from their understanding of the socialist propaganda which continues to be widespread in post-socialist Vietnam as well as from the Vietnamese Constitution.

There is no clear-cut boundary between the above notions of rights, even though workers often express them in different and separate ways. While the second and third notions of rights may be broader, basic and more fundamental than the legal rights explicitly endorsed
in the Labour Code, the moral values that underpin understandings of all these rights, as I have mentioned above, overlap and complement each other.

**Rights consciousness and legal consciousness**

Further to the above analysis, my thesis suggests that a focus on legal rights, as seen in the rightful resistance literature, risks neglecting other values and notions of rights that workers absorb from outside law. It is essential to examine rights consciousness as part of workers’ broader views and social engagements, and their experiences of workplace relationships, rather than only from their legal understanding or access to law. Despite their different acts of resistance and ways of problem framing, workers in my study all exhibit some form of rights consciousness and a will to stand up for their rights when they are abused or neglected by management and/or the unions and the state.

Core workers’ access to legal aid and their trajectory of resistance allow me to further elaborate on their views and evaluations of law, and reflect on the concept of ‘legal consciousness.’ The notion of legal consciousness, as employed by Ewick and Silbey (1992), for example, is broader than (legal) rights consciousness in the sense that it captures the dynamic process through which people’s views of law emerge, develop and change as a result of their experiences with legal institutions. I study core workers’ legal consciousness through their interactions with other ordinary workers and how they try to raise their consciousness, their views of legal aid, their mobilisation of other workers against injustice, and the outcomes of their resistance. Core workers, first of all, see law as a potential resource for workers to understand what is right and wrong in workplace behaviour, and act against managerial abuse if possible. They believe that workers’ access to law will put them in good stead in bargaining with management and contesting their practices.

Core workers’ engagement with labour law further leads them to be critical of its practices. They see that the implementation of the Labour Code, as in dispute resolution, is not impartial and just, and can put workers at a disadvantage. The two core workers, who initiated the lodgement of complaint letters to the labour authorities, started their journey with a belief in the labour law regime and a hope that it would achieve justice. When dispute resolution processes were manipulated and tampered with by management and local state authorities, these core workers did not give up hope in the labour law regime, but saw a greater role for the goodwill and moral considerations of the state and management in response to workers’
demands. Their consciousness, which I describe as ‘critical consent,’ embodies a multi-layered perception of law and the delivery of legal justice, and a paradox of pursuing justice through the labour law regime despite being aware and critical of its limitations.

**Law, labour resistance, and the potential for social change**

This thesis makes an original contribution to the scholarship on labour resistance in Vietnam, and by extension, post-socialist regimes and other states in East and Southeast Asia, by extending the analytical focus beyond instrumental and strategic approaches to state law and policy. Existing studies have focused on how and why people and activists succeed or fail in deploying state laws to seek redress and pursue their causes. They treat law as a set of rules formalised by the state and examine the use of law through lawsuits and collective mobilisation. While a focus on the course and outcomes of resistance is important, it overlooks the nuanced and tacit way in which law contributes to people’s views and understandings of the unfair situations they are in, and enables them to contest those situations. In contrast, by focusing on and elucidating the different values underpinning workers’ demands and acts of resistance, my thesis seeks to enhance understanding of why workers resist by shedding light on workers’ perspectives, expectations, grievances, and aspirations as they unfold through their resistance stories. Understanding the values implicated in these perspectives in turn allows for a critical reflection on the role of different institutions and practices in shaping and generating workers’ resistance. By introducing and incorporating labour law as one such set of institutions and practices, I have shown how it interacts with other institutions and practices in the state-society relationship in Vietnam in informing and contributing to workers’ perspectives and expressions of workplace (in)justice.

The thesis thus builds upon and extends the moral economy framework that has been widely adopted in analyses of peasant societies. The basic norms of justice in those societies, associated with subsistence and reciprocal exchanges, are also implicated in workers’ expectations of the employer-worker employment relationship, and their understandings of what is fair and unfair in that relationship. These norms, rather than belonging to the past, are widespread in contemporary Vietnamese society and also reflected in the state’s socialist ideology, which entails ideals of social equality and the state’s moral accountability to citizens, especially the Vietnamese working class.
This thesis also adds a new dimension to the scholarship on law and society in Vietnam and China. In both countries, law previously has been examined by scholars as a state instrument to govern society, or as a means and resource for popular resistance. These understandings of law are constructed from an examination of fixed rules, procedures, processes, and the way in which these are implemented or deployed. This thesis has sought to grasp the relevance and significance of law from workers’ perspectives, by examining workers’ workplace and social experiences, lay language and interpretations, and cases of both deployment and avoidance of law. It is therefore able to bring out the subtle and often indirect way in which law penetrates workers’ sentiments, evaluations, appeals, and expectations.

The thesis’ findings therefore call for a rethinking of the role of law, showing that labour law serves as a moral resource for workers to judge management’s conduct. Despite many limitations in its enforcement, state law brings about social change by informing and shaping people’s expectations. This subtle effect of law does not always lead to overt actions or articulations to contest problematic practices, but is an important indication of increasing consciousness of fairness, justice, and rights. And sometimes social change resulting from law manifests in overt actions, inspired by legal aid and legal access, aimed at altering existing practices and improving workers’ situations. Of course, in Vietnam, where law is often bent and non-legal practices are often deployed by the powerful to serve their personal interests, such an end is difficult to achieve.

My research also extends the literature on legal aid for workers in China and Vietnam. While previous studies tend to stress the contribution of legal aid and legal knowledge to workers’ individual actions, such as litigation, the thesis shows that legal aid has a potential to bring about collective forms of resistance. The Oxfam-LAC project, through creating social spaces for workers to raise each other’s understanding of individual and collective rights, leads workers to appreciate their connections and mobilise their fellow workers against injustice. However, my findings also caution against a uni-linear approach towards legal aid and workers’ resistance. Existing and imminent surveillance, threat and repression faced by core workers and their co-workers have placed constraints on their collective attempts to overtly challenge managerial practices.

Overall, the thesis contributes to the global scholarship on law and social change, through an examination of workplace disputes and settings in post-socialist Vietnam. Findings from the
thesis pave the way for future empirical research on law, legal consciousness and resistance in relation to other contentious social issues in Vietnam, and for an analytical reframing of law in post-socialist societies.
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