Legal Activism or Class Action?

The political economy of the “no boss” and “no labour relationship” in China’s construction industry

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**ABSTRACT:** This article aims to study an issue of “double absence” embedded in the rapidly changing construction industry and to explore how it induces serious collective action among construction workers in post-socialist China. (**) The political economy of the construction industry has shaped a specific labour use system – a labour subcontracting system. The system generates a specific capital-labour relationship in which the legal labour identity and labour relationship are highly subsumed by an “absent” employer. It creates a double absence in legal terms: an “absent” boss and an “absent” labour relationship. This double absence has led to a perpetual process of wage arrears and struggles by construction workers to pursue delayed wages in various ways, usually involving legal action or non-legal collective action. The findings of this study are drawn from case studies conducted between 2008 and 2009 in seven Chinese cities. The labour struggle – the fight for delayed payment – was understood not as a form of legal labour activism, but as incipient class action in a specific context.

**KEYWORDS:** legal activism, class action, labour subcontract system, Chinese construction workers

**Introduction**

A global China is made spatially possible by Chinese construction workers, comprised of more than 40 million peasant workers hailing from all parts of China’s countryside. Recent years have seen increasing numbers of individual and collective actions among construction workers pursuing delayed wages or demanding compensation for injury or death. These actions include legal litigation, such as suing subcontractors or companies, as well as collective actions such as property damage, physical assault, and even suicidal behaviour. Could these legal and collective actions be understood as class actions, especially when framed by a discourse of human and legal rights? What is the relationship between legal action (supposedly a realm of civil society) and collective resistance (supposedly an area of class conflict driven by production relations)? In the area of labour consciousness, how could workers make sense of their actions, both legal and/or collective, and negotiate with a hegemonic discourse? Do they transform legal action into class action at a particular juncture and thereby transgress the construed hegemonic language of legal rights? Addressing these questions requires an understanding of the political economy of the construction industry and shapes the politics of labour resistance among migrant construction workers. The first part of this paper discusses changes in the political economy of the construction industry and the rise of the labour subcontracting system that results in a “double absence” – the absence of a boss and management and of a capital-labour relationship in the Reform period. The second part focuses on how this “double absence” generates a variety of legal and collective actions among construction workers, and how the workers take and understand their actions.

The rapid development of the construction industry and accompanying structural changes has led to the rebirth of a highly exploitative labour subcontracting system that was abandoned during the socialist period. (1) This labour system embodies two processes: the rapid commodification of labour through non-industrial social relations organised by a quasi-labour market in rural villages; and the subsumption of labour in the production process of the construction sector in the urban areas. These two processes have shaped a specific labour subcontracting system in China under reform, resulting in a perpetual process of wage arrears and the struggle of construction workers to pursue delayed wages in various ways, usually involving violent collective action. (2)

China’s construction industry has experienced astonishing growth in the world market in recent years. (3) By 2007, the Chinese construction industry was consuming half of the world’s concrete and a third of its steel for building its global cities, and was employing more than 40 million workers, most of them peasant-workers from all parts of the country. About 30 percent of all migrant workers from the countryside work in the construction industry. (4) In order to transform Beijing, Shanghai, and Guangzhou into China’s core global cities and speed up the process of urbanisation, China has invested about $376 billion in construction each year since the Tenth Five Year Plan (2001-2005), making construction the country’s fourth largest industry

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