

# Labour Law and (In)justice in Workers' Letters in Vietnam

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## Abstract

This article explores whether and how labour law matters in factory workers' grievances and demands in their letters sent to the unions and state authorities in Đồng Nai Province, an industrial hub in the south of Vietnam. An examination of the letters demonstrates that the legalistic language of rights and other provisions in the Labour Code plays little role in shaping workers' accounts. A majority of letter writers instead referred to moral aspects of subsistence, reciprocity, and their subjective views of fairness to make their claims. Yet the moral constructions of workers' claims may overlap and derive from values imbricated within the Labour Code. These observations raise the need to consider the subtle way in which law generates workers' resistance against management and/or the state, as well as the fluid boundary between law and morality in workers' narratives of (in)justice.

**Keywords:** labour law, resistance, justice, factory workers, Vietnam

## I. Introduction

Once more, with all respect, I urge the leaders of all state agencies of the 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 company.

Mrs. Nguyễn is one of a minority of factory workers in Vietnam who chose to demand justice in writing rather than taking their grievances into the streets.<sup>1</sup> Nguyễn has worked for six years in a joint-stock garment company and is only one among hundreds of workers there that initiated a labour dispute against the company management in the face of legal violations and unfair treatment. The extract above from one of her letters bears resemblance to the kind of rightful claims brought against

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<sup>1</sup> Abandoned by their unions and faced with a complicated legal process of labour dispute resolution, factory workers in Vietnam have tended to bargain with management (and at times the government) for better wages and working conditions through spontaneous strike actions (Siu & Chan 2015; Trần 2013). More background details will be given in the next section.

the abusive power of political and economic elites in authoritarian regimes.<sup>2</sup> In making these claims, resisters exhibit a consciousness of their legal rights and in turn appropriate state law to mobilize popular support and demand justice. Having undergone some legal training and possessing a good knowledge of workers' legal rights, Nguyễn has leveraged her knowledge and made use of legal aid support to fight against managerial conduct. Yet Nguyễn is an exception among many ordinary workers whose main source of information about law is their informal social networks. With these ordinary workers, shall we expect to see similar or different types of claims in their letters, as compared to Mrs. Nguyễn's? And in comparing the claim making between these workers and Mrs. Nguyễn, how can we make sense of their rights consciousness and the implications for the role of law in their resistance?

This article examines factory workers' ideals of rights and justice in relation to the values and practices concerning the Labour Code, which is the key labour legislation in Vietnam. While workers' invocation of the Labour Code and associated regulations has been documented in the literature on Vietnamese labour resistance,<sup>3</sup> more nuanced analysis is needed of how law matters and shapes workers' desire for justice. This article considers law as a cultural schema shaping individuals' construction of disputes and grievances, and how their own narratives reflect, confirm or challenge the way law is used or abused.<sup>4</sup> This article, on the one hand, builds upon the tradition of socio-legal scholarship that situates law within other cultural and normative understandings and evaluates to what extent law influences individuals' behaviour and consciousness.<sup>5</sup> It suggests that law does not always compete with but can complement and overlap other moral values in the framing of (in)justice and in generating resistance. On the other hand, by adopting this analytical lens, the article aims to critique existing labour studies in Vietnam, and by extension, post-socialist regimes, that have side-lined the role of law in labour resistance.<sup>6</sup> These studies tend to view law as a single-dimensional set of rules and regulations that serve to consolidate the state's and capitalists' control over the working class. My study suggests that it is essential to examine law's power from the bottom up, rather than from the top down, to thoroughly grasp the enabling and constraining effects it has upon workers' resistance.

In the broader context, there is evidence suggesting that factory workers and labour activists in Vietnam have invoked legal language and knowledge against abusive management in their strikes

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<sup>2</sup> O'Brien & Li (2006), pp. 2-3.

<sup>3</sup> Trần (2013), pp. 297-9; Kerkvliet (2011), pp. 166-8.

<sup>4</sup> Ewick & Silbey (1998); Marshall (2003); Thireau & Hua (2003); He, Wang & Su (2013).

<sup>5</sup> Merry (1990); Ewick & Silbey (1998).

<sup>6</sup> Chan (2008); Chan & Siu (2012); Pun (2016).

and protests.<sup>7</sup> Yet the spontaneous and unpredictable nature of these actions makes it empirically challenging to investigate in detail how workers use or bypass the law and the aspirations they wish to convey in their actions. This article seeks to overcome this challenge through an analysis of workers' written forms of resistance, that is, workers' letters lodged at the union offices. These written testimonies allow for a nuanced examination of the meaning of law within workers' perception of justice and in their relationship with the state and management. In analysing the letters, I ask, how do workers invoke labour law? Does their use of law serve to condemn illegal practices and call for proper legal implementation, or to convey different sets of norms and expectations about workplace relations, or both?

The intersecting relationship between law and other non-legal framings has been well documented in existing studies on workplace grievances and how employees mobilize their rights in the US. Sexual harassment scholars have shown that female employees, who refuse to be victimized, simply choose not to take their harassers' behaviour personally, rather than invoking the letter of the law or mobilizing legal mechanisms to address their problems.<sup>8</sup> These women's narratives concerning their everyday interactions with male counterparts reveal several different cultural and social interpretations of gendered demeanours and practices.<sup>9</sup> It is precisely these other socio-cultural constructions, which were somehow internalized and tolerated by the harassed, that have limited law's power in protecting female employees against abusive practices. Catherine Albiston's study of the Family and Medical Leave Act also finds that employees' decisions to escalate or give up on their disputes are subject to numerous factors concerning their workplace experiences, and especially with female employees, to the gendered social construction of work and family affairs.<sup>10</sup> In particular, it highlights that existing power and cultural discourse at play can significantly impede employees' contestation of rights violations.

The often ambiguous and subtle way in which law organizes everyday life has not deterred but indeed encouraged scholarly interest in exploring the social life of law. In this article, I adopt Albiston's thesis in acknowledging and exploring "the complex process through which law interacts with alternative normative systems."<sup>11</sup> Such thesis is a critique of studies that "treat law and other norms as an either/or proposition: either social relationships are ordered according to law, or there is

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<sup>7</sup> Trần, *supra* note 3; Kerkvliet, *supra* note 3.

<sup>8</sup> Quinn (2000); Marshall (2005).

<sup>9</sup> *Ibid.*

<sup>10</sup> Albiston (2005).

<sup>11</sup> *Ibid.*, p. 12.

‘order without law’.’<sup>12</sup> I also posit in this article that the relationship between law and other sets of extra-legal understandings can be fluid and mutually reinforcing. Recognizing their nuanced and complex relationships allows for a deeper exploration of law’s discursive power upon meaning- or claim-making,<sup>13</sup> and the socio-political contexts in which law is transmitted and exercised.<sup>14</sup> While Ewick and Silbey stress the need to survey individuals who use and do not use the law to understand its power,<sup>15</sup> what is equally important is how law is used and how useful it is to ordinary people’s reaction to injustice. This raises the need to go beyond the everyday settings and empirically investigate how people lodge their complaints and make claims at formal institutions.<sup>16</sup>

## II. Background on Labor Relations in Vietnam

The 1986 reform in Vietnam, known as *đổi mới* (renovation), gave rise to the development of domestic private and foreign investment and marked a shift from a socialist to a market labour relation system. The Vietnamese Labour Code, passed in 1994 and most recently amended in 2012, has laid the groundwork for the state’s regulation of labour based on the rights and interests of employment parties within their contractual relationships. In practice, the evasion and violation of labour rights enshrined in the Code have led to a rise in labour disputes and factory strikes, with the highest number recorded at nearly 1000 nationwide in 2011.<sup>17</sup> More than 70 percent of strikes from 1995 to 2012 occurred in foreign enterprises dominated by Taiwanese, Korean, Hong Kong and Japanese investors.<sup>18</sup> It should be noted that strikes in state-owned enterprises are under-reported, and the cultural alienation between foreign managers/supervisors and Vietnamese workers is among the factors most likely to arouse and escalate shop floor tensions.<sup>19</sup>

The Vietnam General Confederation of Labour (VGCL) remains the only recognized trade union in Vietnam. It claims to represent the Vietnamese working class and serves under the Communist Party’s agenda in the interest of regime stability. Under the pressure for reform following the waves of factory strikes, the VGCL has exerted a greater voice in law and policy dialogues for the benefit of employees.<sup>20</sup> There are also increasing efforts to enhance the bargaining capacity of company unions affiliated with the VGCL on the shop floors, whose positions are ironically often filled by

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<sup>12</sup> *Ibid.*

<sup>13</sup> McCann (1994), pp. 6-9.

<sup>14</sup> Merry, *supra* note 5; Silbey (2005); Liu (2015).

<sup>15</sup> Ewick & Silbey, *supra* note 4.

<sup>16</sup> Albiston, *supra* note 10, Lovell (2012); Goluboff (1999).

<sup>17</sup> Pringle & Clarke (2011); Siu & Chan (2015); Do & van den Broek (2013).

<sup>18</sup> Trần, *supra* note 3, pp. 195-7.

<sup>19</sup> *Ibid.*, p. 197

<sup>20</sup> Knutsen & Hansson (2010); Do & van den Broek, *supra* note 17.

management personnel.<sup>21</sup> These efforts have failed to increase workers' bargaining power and to amend the persistent distrust between them and the organization that claims to act in their interests.

In brief, the Labour Code<sup>22</sup> grants employees the following rights: (1) to work and freely choose work, (2) to receive a wage compatible with their skills and knowledge; to work in a safe and healthy environment, and to receive welfare benefits (3) to establish and join a trade union and implement regulations to protect their lawful rights and interests, (4) to unilaterally terminate the labour contract in certain circumstances and with advanced notice, and (5) to strike in a lawful way (Article 5). A notable feature of the Labour Code often discussed in the literature on labour relations in Vietnam is the distinction between rights-based and interests-based collective disputes. A dispute about rights is one that arises out of different interpretation and implementation of labour laws, collective bargaining agreements, and other lawful regulations and agreements between employer and employees' collective (Article 3). A dispute about interests is one that arises out of the request of employees' collective on the establishment of new working conditions as compared to labour laws and other lawful regulations and agreements (Article 3). These two types of dispute require separate processes of resolution (Chapter XIV).

The formal system of dispute resolution is out of touch with Vietnamese workers and almost non-functioning.<sup>23</sup> A new role was then required of the local union to attempt to solve workers' complaints and demands as soon as they emerge and prevent them from bursting out onto the streets. The union's Examination Committee is among the key bodies that undertake this role by receiving and processing workers' letters. 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 union receives a workers' letter, it is required to either verify the problem via company unions, or transfer the letter to the company union to resolve.<sup>24</sup> The upper-level union will facilitate negotiation between both parties if mediation fails at the enterprises, yet the outcome, once reached, is non-binding. The maximum duration for complaint processing is ten days from the date of receipt.

However, such promptness does not necessarily do justice to aggrieved workers. As I understand from reading the unions' annual reports, a prompt and timely resolution of workers' grievances is one of the necessary measures to prevent the outbreak of strikes and preserve industrial stability.<sup>25</sup>

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<sup>21</sup> *Ibid.*

<sup>22</sup> National Assembly of Vietnam (2012).

<sup>23</sup> Lee (2006), Trần, *supra* note 3.

<sup>24</sup> VGCL (2014).

<sup>25</sup> The data on the resolutions of workers' letters and workers' situations afterwards are nonetheless unavailable.

Another problem is the anonymity of the letter writers. The VGCL decision in 2014 requires that, to be eligible for processing, the complaint letters must now contain the date of writing, name, address and signature(s) of the complainant(s). This is a notable change from the previous version of the rules, which allowed for letters to be sent anonymously. As of 2014, complainants' identities can be revealed to the company union and management, making it possible for them to be penalized for speaking badly about their bosses. Workers who brought their case to the unions might not be aware of the process following their lodgement. Their decision to do so, as the analysis below demonstrates, is less rational or strategic than might have been expected.

### III. Data and Methodology

The main source of data for this article is a set of workers' collective complaint letters sent to the provincial Labour Federation and three upper-level unions in Đồng Nai Province, an industrial hub in the south of Vietnam. At those offices, I read through all letters, lodged in 2013 and 2014,<sup>26</sup> and I selected for analysis those letters concerned with collective grievances, i.e. grievances related to workplace relations that affect a group of workers. This selection is due to my initial interest in studying how consciousness manifests in workers' binding with each other in their collective acts of resistance. Among the 21 selected letters, 16 letters only contain workers' self-ascription as "workers in the company / section X" without any signature. In two out of those 16 letters, the writers stated clearly that they refrained from revealing their names and staff members 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; one of them also contains a list of complainants' names. The analysis also includes one letter published in full in *Lao Động* (The Labour), the national labour newspaper, in 2010 and headlined as "a worker's letter full of grief."<sup>27</sup> Addressed to the VGCL Chairman, the writer clearly identified her name, work position, and the name of her company.

The letters vary in their titles and writing styles. The majority of them, exactly eight letters, are entitled "request letter" (*đơn đề nghị / kiến nghị*). All of them contain the writers' request for the union's and/or management's consideration of the issues they raise. Another eight letters are titled "complaint letter" (*đơn khiếu nại*). Among them, only three writers state their intent of "suing" (*kiện*) and "complaining" (*khiếu nại*) the supervisors / 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*

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<sup>26</sup> The offices no longer retained the letters of previous years.

<sup>27</sup> Lao Động (2010).

*giúp*), and only one is presented as a “report letter” (*đơn trình*). The styles and structures of letters in all the groups are relatively the same. As can be seen from their titles, not all the letters are explicitly of a resistance nature; nevertheless, the language that appears throughout the texts suffices to speak of workers’ complaints or demands and their wish to rectify existing problems. Even though some of the request letters do not put forth any blame or make any accusations, they are presented in a manner that shows workers’ disagreement and dissatisfaction with the business’ decision.

All letters were lodged by workers across 16 companies, with three companies each having two letters raising similar issues. From the dates in those letters, I find that in two company cases, the letters were written in two consecutive dates; in the other case, they were written six months apart. All these companies belong to the footwear, garment, electronics and wood processing industries, and plastic, metal and chemical production.<sup>28</sup> The numbers of employees in these companies range from 170 to more 18,000.

Most of the letters appeal to the union and state officials, whom workers address in a respectful manner. Fifteen letters provide detailed stories and impassioned accounts of the situation of the complainants and their affected fellow workers. The rest merely make brief summaries of their problems and requests. About two thirds of those 15 letters contain comprehensive depictions and stories of workers’ experiences on the shop floor. On a close reading, I also find that three letters, titled “request letter,” were initially directed to the company management and were about workers’ demands for a higher wage rise. They made their way to the union offices to serve as evidence that workers had previously appealed to the management in vain.

The translation of the letters to English is a fascinating but challenging experience to me as a native Vietnamese speaker. Many of them contain long sentences sometimes without breaks or commas, spoken language and shorthand, and at times vague references to the actors or subjects of particular actions, which are all understandable since most letters were presumably written by the authors in a tense and distressful situation. In my translation, I have refined the grammar of long sentences to make them easy to follow, but I have kept intact the writers’ rhetorical devices such as rhetorical question or exclamation. Some ambiguous references can be surmised from reading the surrounding texts. I have tried to literally translate the lay language and common expressions when I could not find the English equivalent. While all efforts have been made to preserve the writers’

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<sup>28</sup> Only five of the complaint writers had some mention of the type of work of their companies. I obtained these details by looking up the companies’ names on the internet, and looking for them in the unions’ strike records (five of these 16 companies have been subject to strikes).

original meaning, my translation may not have done justice to the feelings and emotions conveyed within the letters, especially through exclamatory and emphatic words.

#### IV. Workers' Grievances and Claims

At the start, complainants generally referred to themselves as “the collective of workers in plant, section, company X,” “we workers,” “workers, brothers and/or sisters,” and “employees”. Half of the complainants described 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 letter writers referred to workers’ good behaviour, hard work, and compliance with the company regulations to lay the ground for further justification of their claims. A few others referred to their long service and emotional attachment to the company as their second home.

As an exception, the letter that made the news headline (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 organizations 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, sympathize with our fates as workers, and look at the environment in which Vietnamese citizens are working.

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 will resurface at the end of the letter and form a vital part of her rights claims. By positioning herself as one of the “employees,” “workers,” and “citizens,” she wants to assert her legal and political identity within her relationship with the management and the state. This not only makes her appeal feel warranted from the chairman but also evokes a duty of care from the leader of the trade union. Thắm seems to put herself in a paradoxical situation when she feels the urge to solve workplace grievances and expose the reality of injustice without intending to challenge the company, which embodies the power structure that has pushed her to cry out in desperation. Yet throughout the letter, she cannot help but accuse the managers and supervisors of perpetual exploitation and maltreatment of the workers, before bringing home her argument and aspiration for a “rightful struggle” (*đấu tranh đúng đắn*).

##### A. *Exploitation and Working Hours*

None of the workers wants to work [during lunch break], but they have to, because they are afraid of being repressed. During normal working hours, they [the management and supervisors] have squeezed the most of



our labour, and then do not allow us to have a rest at noon. As a consequence, our health has deteriorated seriously.

This extract exemplifies a common type of grievance relating to working hours: overtime work. Related complaints, which appear in ten letters, include reductions in workers' rest time, forced overtime, and the failure to pay extra for overtime work. These complainants gave a depiction of the exhausting condition in which they are working and called for a reasonable working hours on the shop floor. They particularly attacked the coercive behaviour of the management, frequently describing such behaviour as "putting pressure" (*ép*) and "forcing" (*bắt*) when overtime is organized. The above extract, similar to three other letters, makes clear that long working hours affect workers' health and reproduction of labour power, while the rest weave this issue within a broader picture of their working conditions as "too stressful" (*áp lực quá*), or "unbearable" (*không chịu nổi*). Two writers also attribute workers' endurance of hard work to the management's material pursuits, obsession with the quotas, and ignorance of workers' wellbeing. Titled as "request letter," these two letters end with a clear request statement that any work forced upon workers during lunch and break time must be stopped.

Of all ten letters that raise the overtime issue, only two made explicit reference to the legal provisions relating to working time. Yet even this was woven with another criticism of the managers for their self-interests:

As we know, according to the regulation, we work for eight hours a day and have a one-hour lunch break which is not counted towards our work 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, from 30 to 40 minutes.

The writers further added that: "we think the company should be clear about the law," which suggests certain expectation about management's legal conduct. In this case, law was not evoked to call for an honouring of legal rights or an outright condemnation of violation, but to leverage the expression of (un)fairness derived from the management's unethical behaviour.

### *B. Workplace Discipline*

As indicated in the letters, workers experience three common forms of discipline: (1) threat of punishment for speaking up about their own concerns and grievances, (2) being forced to lie about their working conditions, and (3) verbal abuse by line leaders, supervisors and managers in response to workers' queries and requests. In those letters, workplace discipline is not presented as a problem

requiring intervention, but is coupled with grievances related to wage policy, overtime and working hours. In the following example, the writers complained 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 increase 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.

The writer here combined their general understanding about the state's regulation 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. The writer asserted that workers' previous indecision to appeal is not because they were not aware of such unfair situation, but because they were put off by the threat of managerial retaliation. In writing to the union, these workers refused to submit to the threat but instead struggled to raise their voices to a third party and sought intervention. This observation demonstrates that it is necessary to look beyond the social institution of work and management strategies<sup>29</sup> to ascertain employees' behaviour in response to workplace problems. The availability of a dispute mechanism beyond the workplace and workers' perception of the role of stakeholders involved in such mechanism also matter in their decision to escalate their grievances.

In four letters, workers had accumulated long-standing grievances to such an extent that they could not be condensed in a few pages. Complainants described their frustration as shared by all workers on the same production line or in the same group. The following extract lucidly illustrates the ongoing dissatisfaction and feeling of powerlessness as collective experiences:

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.

Besides a strong sense of sympathy towards the mistreatment of other workers, the writer also conveys a shared feeling of anxiety and frustration. The "pressure" here does not just refer to the physical strain of labouring and catching up with the quotas, as ethnographic studies on labour relations in Vietnam have shown,<sup>30</sup> but also to the mental strain as a result of 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

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<sup>29</sup> Marshall, *supra* note 4, pp. 99-105; Albiston, *supra* note 10, pp. 24-5.

<sup>30</sup> Chae (2003); Nghiem (2005).

against the silencing of their voices on the shop floor and a wish to stay on the job (and earn their living) without being destroyed emotionally.

Perhaps the most distressing embodiment of workers' hardship and demoralization is captured in the following lines:

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 until 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 [my italics].

The analogy between the company and a jail, and between workers and prisoners, tells a disturbing story of extreme subordination in which workers' self-esteem and their right to decent treatment are destroyed. The description of working hours in an increasingly agitated tone has a powerful 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 confined in this cycle of exploitation.

The writer's mention of the Chinese (*người Trung Quốc*) 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 this reference to the Chinese, I also found references to the Japanese, and Korean managers/ supervisors in three other letters (including the published letter). Compared to letters in which the writers did not mention the managers' ethnicity (which can presumably suggest Vietnamese managers), the depictions of managerial treatment in those three letters convey more deeply a sense of workers' demoralization and inferior status. An ethnographic study of a multi-national textile company in Hồ Chí Minh City in the early 2000s has shown that tensions on the shop floor can be entrenched along ethnic lines, which, in that case, involved hostility between Vietnamese workers and Korean managers.<sup>31</sup> The research found that the Korean managers often “shout” (*la*) rather than “talk” to the workers,<sup>32</sup> a behaviour that workers saw as rude and contemptuous. It is, however, not possible to adequately address or make a conclusive statement about the role of ethnic difference in shaping workers' consciousness of resistance from its sweeping

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<sup>31</sup> Chae, *supra* note 30, pp. 92-3.

<sup>32</sup> *Ibid.*

appearance in the letters. A possible assumption here is that, in evoking the managers' ethnicity, the writers want to bolster their expression of immorality and appeal to the sympathy from the officials who share the same bond of citizenship with them.

The last form of discipline, forcing workers to lie about their working conditions, is detailed in four letters. Such discipline is a part of the managers and supervisors' tactic to cover up their unlawful conduct in the presence of customers and labour inspectors. From my reading of the letters, what is telling about this practice is that workers seem to exhibit a more acute feeling of the management's misconduct in the presence of outsiders with whom the company has a stake. Workers' inability to speak their own voices in such circumstances has added to their existing frustration about work pressures and management's immoral behaviour. For instance, one of these 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 speaks the truth will 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 hours per day must not exceed half of the normal working hours for each day (Article 106). 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 (Article 110). A general understanding of what would constitute appropriate working time emerges from the letters' recounting of the management's verbal strategy. According to the letters, this strategy is an arbitrary withholding of the "truth" and in turn puts into question the moral integrity of the managers and supervisors. In situating this discussion within the whole letter, the lies which workers are forced to tell become, ironically, the foundation for their complaints about incessant work, which spans 12 hours a day and 30 days a month. Workers' accusations overall reflect their general understanding of an appropriate working time, which is underpinned by certain legal guidelines and couched in a moralistic language.

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 Southeast Asian peasants in the 20<sup>th</sup> century<sup>33</sup> and among Chinese state workers bearing the brunt of economic reform in the 21<sup>st</sup> century,<sup>34</sup> now the Vietnamese workers' fear of losing their income and falling

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<sup>33</sup> Scott (1976).

<sup>34</sup> Chen (2000).

below subsistence has ironically served to entrench managerial power and has hindered workers' intent to resist. 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.

### C. Wages

Wages have been one of the most pressing issues in labour relations in Vietnam<sup>35</sup> and are the third common source of grievances in the letters. While the state and union officials tend to attribute wage-related disputes to companies' non-compliance with the law and the government's minimum wage policy, most complaint writers have different justifications for their demands. I classify workers' demands into two categories: "decent wage" and "fair wage" in order to provide a better reflection upon workers' different forms of disputing language and behaviour.

Wage demands that are based upon workers' living needs are demands for a decent wage. My conceptualization of decent wage is drawn from the International Labour Organization's decent work agenda, which advocates for an employee's income that ensures "security in the workplace and social protection for their families."<sup>36</sup> In absolute terms, an income earned from decent work should suffice to meet the living standard of employees and their families, and protect them against poverty.

Five letters revolve around the demand and concern for a decent wage. For instance, in the following examples, the complainants draw attention to the difficulty of workers' sustenance of their livelihoods based on their low incomes and the manager's delay 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.

[...] 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

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<sup>35</sup> Trần, *supra* note 3; Siu & Chan, *supra* note 17.

<sup>36</sup> ILO (2016).

often in squalid condition but cost a substantial amount of their monthly income.<sup>37</sup> Workers' reliance on their income from one month to another demonstrates their precarious living condition and limited saving to spare.

The way workers framed their demands here bears resemblance to the fundamental principle of subsistence in pre-capitalist peasant society,<sup>38</sup> and reflects the longstanding moral norm in Vietnamese society. Similar to peasants who rebelled against their landlords when their minimum livelihood was threatened, factory workers write and lodge their complaints against management when their basic needs are not secured. Besides the rhetorical question raised in the above extract, workers' living needs also manifest in expressions such as “for our rice and clothes” (*vì miếng cơm manh áo*), “for taking care of our family,” and “for a stable income,” as found in other letters. Paradoxically, as shown in the preceding sub-section, those basic needs can also account for workers' silence and obedience in the face of managerial discipline and threat.

The second category of wage-related demands – for a fair wage – appears in three letters. In the broader context, while debates about living wages are prevalent 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 what constitutes a fair wage. Aspects of a fair wage go beyond the concern about workers' living needs; they also incorporate other claims for fairness and the existence (or lack of) workplace practices that allow workers to obtain a payment they deserve. In my textual analysis of the complaint letters, I did not search for the word “fair,” (*công bằng*), but underlined the contexts when the writers mentioned, complained, or made claims about their wages. Workers' appeals for a fair wage 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.

The following extract exemplifies a demand for a fair wage. Here writers reasoned that workers should be entitled to a wage rise due to the intensity of work: the more time and physical effort one spends on his/her tasks, the higher wage one deserves. The writer highlighted that workers' contribution to the business is no less important than office staff and called 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?

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<sup>37</sup> Trần, *supra* note 3, pp. 182-90.

<sup>38</sup> Scott, *supra* note 33, pp. 3-6.

In another letter, delivered in a more assertive tone, the writer justified workers' demand for a wage rise by pointing to the skill difference between workers in two different sections. Instead of relying on labour law or contractual agreements, these workers leveraged their own judgements to issue a demand that the management should remunerate them fairly for their contribution to the business and imply a sense of distributive justice. This wage increase issue further exposes the lack of bargaining practices at work, which hinders workers' chances of conveying their wishes to the management to demand a fair wage. The delivery of these letters stands in stark contrast to pleas for subsistence often delivered in a desperate and pitiful manner. In this regard, the emergence of disputes in relation to fair wages are not preceded by an injury or harmful incident,<sup>39</sup> but are instead foregrounded by judgements of perceived unfairness.

The published letter again offers an exception from the above classification. While raising the wage issue, the writer also weaved her complaint with other workplace problems and especially a twisted rhetorical use of "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". 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? [in original]

The author here put the state's labour law side by side 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 their wage payment, the second "law" is sarcastically employed to mean injustice and effectively puts an end to workers' desire to make sense of their situation. As such, while Thám hints at the possibility that a certain working knowledge of the 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 felt 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, concerns and confusion, as it shows that workers eventually lose out regardless of whether or not they know about law or even resist on the basis of it.

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<sup>39</sup> Felstiner, Abel & Sarat (1980/1981).

#### *D. Female Workers' Rights Abuses*

The last category of complaints, found in four letters, concerns managerial abuse of female workers' legal rights and benefits. Chapter X in the Labour Code stipulates female employees' special benefits such as maternity leave, nursing, and rest time. For instance, there is protection for female workers who are in the later stage of their pregnancy or are nursing a child under 12 months of age (Article 155). However, in practice, it is precisely these entitlements that are often neglected and abused by management.

Two letters raised 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 (Article 22). If the workers are employed beyond two terms of up to 36 months, then the contract becomes an indefinite one. An 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 (Article 155). However, workers' letters indicate that female workers often find it difficult to achieve the indefinite contracts to which they were legally entitled:

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.

The failure to renew female workers' contracts exemplifies the breach of articles prohibiting discrimination against pregnant and nursing women; however, the writers characterize the situation as ethically wrong rather than unlawful. The complainants voice their legal understanding 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 morality-based call for authority's intervention. The writer also perceives female workers' mistreatment as a shared injustice that frustrates other workers in the same workplaces, effectively shifting female workers' problems from the individual to the collective on the ground of an ethical right to subsistence.



### *E. Workers' Appeal To Justice*

In their requests for resolution at the end of the letters, only two writers made explicit reference to the Labour Code, with one of them demanding a proper enforcement of law. The rest conveyed an expectation that the unions and the state should carry out their moral obligations to workers.<sup>40</sup> Such expectation echoes the state's and unions' propaganda and rhetoric that they strive to "take care of" (*chăm lo*) workers' lives and, more broadly, it reflects the prevalence, if not entrenchment, of socialist mindsets:<sup>41</sup>

I want to ask the state authorities: 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 to protect and help us," "intervene in a timely manner," or "protect the rights and interests of employees." Complainants ask only that the state and unions show compassion for their hardship, and they apparently believe that these institutions are well-positioned and capable of rectifying the managers' misconduct. Their letters show how workers view themselves in a paternalistic relationship with the state,<sup>42</sup> and ultimately hold the state accountable for their problems.

The published letter ends in a similarly touching voice, yet it also raises a passionate and desperate demand for workers' rights most clearly articulated amongst all collected letters. Initially Thám referred to herself and her fellows as "employees," "workers," and "citizens," yet the feelings of resentment became so strong in the middle of the letter that she was led to wonder whether the company even saw workers as "human beings." 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 as human beings 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, and who would we trust and rely on?

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<sup>40</sup> Similar type of appeal is also found in workers who took strike action (Nguyen 2017).

<sup>41</sup> Legal scholars have widely held that socialist ideals and traditional moral norms and precepts remain influential in the way Vietnamese state and people view, approach, and enforce laws (Balmé & Sidel 2003; Gillespie & Nicholson 2005).

<sup>42</sup> Goluboff, *supra* note 16, p. 738.

The rights that this worker calls for are more fundamental than the legal rights designated in the Labour Code. In the context of Thắm's account, I would interpret the meaning of "equality" (*bình đẳng*) as fair treatment that should be exercised and enjoyed by all people, regardless of their positions in the company. The rhetorical question about a rightful struggle conveys both a desire for emancipation and a feeling of hopelessness. It also embodies workers' moral integrity and the reality of injustice that takes their faith and hope away. The rightful struggle that she refers to may not be a struggle sanctioned by law, but an ongoing moral struggle to reach hearts and minds and regain social justice for the workers.

Thắm's demands for equal treatment and respect also echo some principles and provisions 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 stipulates 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 Thắm's letter does not include reference to the Labour Code nor employees' statutory rights, yet it effectively incorporates the values embedded within Articles 6 and 7. Indeed, the principles concerning fair treatment, equality and respect already appear in other writers' pleas, which were predominantly couched in lay expressions of (un)fairness rather than rights-based assertions. These observations in turn indicate an overlap between legal and extra-legal claims in the formation of workers' challenges against power and authority.

## V. Revisiting Mrs. Nguyễn's Rightful Resistance

I had a chance to know Mrs. Nguyễn thanks to her engagement in a legal aid project, previously funded by Oxfam.<sup>43</sup> With assistance from a labour lawyer, Nguyễn managed to compose a complaint letter and appeal directly to the labour inspector against her management's illegal conduct. Despite facing a labour institution that has been notoriously skewed against workers' interests,<sup>44</sup> the legal knowledge she has gained confirmed her conviction that her struggle was legitimate and that her demands should, by law, be met. It is not surprising that her letter is dense with evidence and legal accusations against the company's misconduct, and argues straightforwardly for a proper enforcement of labour law. Below is a substantial portion of her accusations:

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,

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<sup>43</sup> For more details of this project, see Nguyen (forthcoming 2017).

<sup>44</sup> Sidel (2008).

if we wanted to have a wage increase, we had to take a skill examination to show that we can make a certain quantity of clothes in a certain time. [...] Such conduct is *against the law*, as the company is evading its responsibility to employees. [my italics]

The reference to “rights and interests”<sup>45</sup> constitutes both legal and moral claims. Legally, the pensions that workers receive each month must 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 their legal responsibility, to ensure employees’ welfare and livelihoods. The way Nguyễn framed her argument demonstrates an awareness not just of workers’ legal benefits, which have been infringed upon by the management, but also of the longer-term ethical consequences borne by the workers.

In 2015, Nguyễn also sent a hand-written letter to the provincial authorities, in which she evoked the Communist Party’s rhetoric, its moral authority, and its campaigns concerning cadres’ conduct. The language and sentiment expressed in her personally-composed letter are different from the predominantly legalistic language in her previous complaint letter. It seems that when legal reasoning was exhausted to no avail, she decided to opt for an emotional appeal to justice. Nguyễn herself is not a Communist Party member, yet she derived her judgement from the Party’s political campaigns that she believed have established the grounds for ones’ legal and moral behaviour. 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 Đồng 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 ahead of the Party Congresses at the local levels. Unfortunately, there is an enterprise that *violates the law*, despite being awarded the title “hero in the reform era”<sup>46</sup> 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 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 fair 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

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<sup>45</sup> Despite a legal distinction between rights-based and interests-based collective labor disputes, workers do not draw out such distinction but refer to rights and interests as a collective, both here and in their verbal account (Nguyen 2017).

<sup>46</sup> The criteria for this title are outlined in the Prime Minister’s decision 38/1999/QĐ-TTg, which, among others, include a business’ contribution to economic development and conformity with the party agenda and state legislation.

addressed my complaints in a cosmetic manner and protected the business; they also forced me to sign a meeting memo in which I have to confirm that I will stop sending my complaints and denunciations. Such command has given grounds for the company to punish and repress me in a brutal manner.

I am wondering if there is no justice or equality in our lives, in our society. I guess that I might remain in agony and pushed to my death before my letters are resolved.

As mentioned at the start of the article, Nguyễn's letter bears resemblance to the type of rightful claims made by aggrieved citizens in China, who mobilize official discourse and legal institutions in a hope to curb the power of corrupt and abusive elites. Nguyễn arrived at her plea by extensively drawing upon political rhetoric, which has been ironically betrayed by the people who are supposed to act upon its principles, given their position and status. Her sorrowful 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. She does not just draw on extra-legal claims in a tactical way to justify the authority's attention, facilitate their intervention, or push the state to deliver legal justice, as has been the case with the American citizens who wrote to the Department of Justice in the Depression era.<sup>47</sup> She also draws upon these claims because she has faith in the values underpinning them and conveys a hope that her letter might ultimately reach a good-hearted official.

As such, despite the legally adept complaint language in the type-written complaint letter, her appeal to justice overall is not so different from that of other letter-writers: 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," Nguyễn has eloquently wedded her aspiration for workplace ethics to the fundamentals of the Vietnamese state's socialist vision of equality and progress.

## VI. Conclusion

Drawing from workers' letters in Đồng Nai, this article has brought out aspects of subsistence, reciprocity, and lay morality in most writers' demands and aspirations. A minority of them evoke aspects of the Labour Code to construct a legal reasoning or to bolster their moral expressions of fairness. The way in which workers support their claims suggests a consciousness of broader social rights that the state, union and management have tended to abuse and overlook. In comparison,

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<sup>47</sup> Lovell, *supra* note 16, pp. 126-36.

Vietnamese workers' flexible and varied approach to petitioning resonates with that of Chinese workers and citizens engaged in public and state-sanctioned channels to seek justice.<sup>48</sup> The language of workers in both countries is an outcome and reflection of societies that previously were bound by the socialist social contracts and customary moral norms rather than codified written laws.

This article further challenges the either/or perspective of law often encountered in the scholarship on state and society relations in Vietnam. Here, 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, and processes, and the extent to which these are implemented or deployed. This analysis has sought to grasp the relevance and significance of law from workers' perspectives, lay language and interpretations featuring their workplace experiences. It is therefore able to bring out the direct and—more often—the indirect way in which law penetrates workers' evaluations, appeals, and expectations.

Despite many limitations in its enforcement, state law can bring about social change by informing and shaping workers' 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 an 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 settings where law is often bent and non-legal practices are often deployed by the powerful to serve their interests, such an aspiration is difficult to achieve.

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<sup>48</sup> Thireau & Hua, *supra* note 4; Lee (2007); Michelson (2008); He & Feng (2016).

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